

# LABOR IN THE AMERICAN ECONOMY

# Labor in the American Economy

*by*

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*First Edition*

*Second Impression*

NEW YORK    TORONTO    LONDON  
McGRAW-HILL BOOK COMPANY, INC.

1948



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## *PREFACE*

On the shelves of my study is a long row of textbooks in the field of labor problems. If they are arranged in the chronological order of their publication, beginning with Ely's pioneer work, they reveal a curious trend. With a few notable exceptions each volume is longer and more encyclopedic than its predecessor, with several of the later prewar and postwar volumes running well in excess of one thousand pages. As a teacher I have been distressed to discover that, although many of these books are really excellent in their comprehensiveness, students either will not or cannot read them in their entirety in a one-term elementary course in labor. It has been my experience that students who approach the subject in comparative ignorance cannot understand the fundamentals of labor economics if they are started out with a plunge into a vast mass of detail on everything relating to labor. They seem to require a continuous line of reasoning rather than a compendium of facts. Out of that experience has grown this volume.

To some extent this book follows the traditional mode of organization, but much that is customary has been omitted. The wage theory, which is a part of the theory of distribution, is well treated in courses in principles of economics and is not restated here. Rather, I have made an effort to discuss wages in such a way that the reader who has mastered elementary economic theory will be able to see its application in actual wage determination, and yet the reader who has never taken a course in economics can still grasp the fundamental principles that determine wage rates in practice.

I have touched very lightly on contemporary labor law and have said practically nothing about the long history of unionism

before the courts. Labor law has become exceedingly complex in recent years so that justice cannot be done to the subject in a few chapters. It is my understanding that most colleges and universities are now giving special courses on labor law for non-law students. It seems best, therefore, to leave the intricacies of the subject to advanced courses and to deal with it in the elementary course only as it is essential to the understanding of the principles and practices of collective bargaining.

Very few statistics are included. Statistical materials get out of date very rapidly, and, since they are readily available in such current publications as the *Monthly Labor Review*, it seems unnecessary and inappropriate to include them in a book. It is presumed that an instructor will probably want to supplement assignments in the book with fresh statistical data and probably with pertinent reference readings.

The style in which I have written is somewhat less formal than that of the traditional textbook; but the subject itself is lively, informal, and very human, and I have thought it appropriate to set the style to match the subject matter.

Although I have placed the proper credit line in the text, I want to express here my appreciation to William Rose Benét, *The Saturday Review of Literature*, and Alfred A. Knopf for their permission to use the apt quotation in Chap. 2. My intellectual debts are literally too numerous to mention, but for their most tangible aid I publicly record my thanks to James K. Hall, John P. Herring, Pat and Charles Larrowe, and Betty Peistrup.

WILLIAM STEPHEN HOPKINS

SEATTLE, WASH.

November, 1948

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## *Chapter 1*

# *INTRODUCTION*

### LABOR ECONOMICS

The only invariable and indisputable facts involved in all labor disputes are that things are always other than they seem and that any part of a labor contract is potentially subject to dispute. Because of these basic propositions, Labor Economics is not an exact science. Rather, it is a study in the art of human relations. It is as involved, as contradictory, and as fundamentally important as human nature itself.

"Labor" is a term which is applied to an overwhelming majority of the population of the United States. It includes all the wage earners, most of the salary earners, and, when used in a general sense, the members of their families. Labor Economics is the study of the relation of this large group to the economy in which it lives. Since it deals with the livelihood of these millions of people, it is immediately concerned with their daily lives, their health and comfort, their hopes and aspirations—with the very fabric of their existence. But it also deals with the success or failure of business ventures, with the production, distribution, and consumption of goods and services, and with the economic destiny of the nation itself.

About all these matters there are, of course, many items of information which, for all practical purposes, may be called "facts." But all these facts must be qualified; none of them can be assumed to be eternally true. First, an approximation to the existing American economy is assumed in the following pages. This posits a substantial sum of personal freedom for both em-

ployers and workers and a large area of individual entrepreneurship. In a totalitarian state, a mature socialist society, or an economy of political anarchy, a very different set of facts would present themselves. But even the American economy is constantly changing. Facts about Labor, therefore, are apt to be transient. Even our statistical knowledge must be qualified because, in our present stage of development, it is inadequate. Our descriptive knowledge, when not inadequate, is frequently prejudiced. Every question involving Labor also involves every other aspect of the national economy; every economic question involves psychological, social, and political implications. And, to further complicate the situation, the student must bear in mind that, for immediate purposes, the truth is sometimes of less practical importance than is that which people believe to be the truth.

The study of Labor Economics, however, is not as hopeless as it might seem. Doubts and vagaries though there be, a vast fund of actual experience has nevertheless accumulated. Statistical errors frequently offset each other as the statistical data increase. Certain practices and procedures tend to follow a reasonably uniform pattern. A multitude of ideas, few of them exact, justifies broad conclusions as being tentatively correct and practicably workable. All of these, taken together, can form an honest portrayal. For, as Richard Burton wisely observed, "Truth is the shattered mirror strown in myriad bits."

The scholar who devotes attention to Labor Economics is not immediately concerned with blanket justification or condemnation of unions, workers, or employers. Like the medical pathologist, he first seeks to know as much as possible, after which, like the medical practitioner, it is his privilege to put flesh on the bones of research through the use of a warm understanding of human nature. He cannot be unsympathetic to the livelihood problems of the majority of mankind, but he must temper his sympathy with realistic wisdom. It is not easy to master the multitude of details which make up our knowledge of Labor Economics. It is even more difficult to maintain judicious balance and to encompass the larger ideas without narrow prejudice. But

the attempt to do these things provides a study which is intriguing and vitally human.

### WHAT IS LABOR?

It has been said above that Labor includes most of the people in the United States. It is impossible and unnecessary to give a precise and enduring definition of the large group that is properly so designated. For purposes of administering the wartime wage and salary stabilization program, the Federal government was, in 1942, obliged to adopt a rule-of-thumb distinction between wages and salaries, which reveals many of the difficulties of distinguishing between Labor and Management at the border line. Wage earners were defined, first, as all persons represented for collective-bargaining purposes by a labor union. In addition, all employees receiving wages totaling less than \$5,000 a year, exclusive of those engaged primarily in executive or professional duties, were included. Roughly speaking, this is a fair enough delimitation of "Labor." Clearly, the group included within these boundaries is of a fluid nature, with individuals continually moving in and out of it. For purposes other than the wartime wage-stabilization program, certain additional groups are sometimes thought of as being a part of Labor. For example, sharecroppers in the South are not technically employees but have on occasion been considered as eligible for union organization. Most professional groups are customarily excluded, but existing unions of teachers, lawyers, newspaper writers, musicians and actors, and laboratory and technical workers indicate that some among the professional people consider themselves to be a part of the labor movement. Certain industrial foremen have recently organized into unions, but many of them still think of themselves as a part of Management. The self-employed are normally excluded from the concept of Labor, but in a few trades where the very small shop predominates the proprietors are union members.

The circumference of a lake may increase or diminish, individual drops of water may come and go, and yet the lake itself remains distinguishable. With the exception of border-line cases

such as those mentioned in the preceding paragraph, Labor as an economic category also is distinguishable without great difficulty. Generally speaking, its members are the skilled craftsmen, the semi-skilled, the clerks, the common laborers—in short, they are the job holders who do most of the remunerative work of the nation under the direction of supervisory representatives of management.

The fundamental necessity of maintaining these many workers is obvious. Without them no economic enterprise can operate. Employers don't "give jobs to workers" any more than workers give profits to employers. On the contrary, since workers and their families constitute the bulk of the nation's consumers, markets collapse if they are not employed and paid. But their significance might well go beyond this, for the political power of a majority in a democracy is absolute. If they were a unified and homogeneous group, they would dominate all aspects of the national activity. However, they are not, and probably cannot be, a wholly unified group.

Each worker, in addition to being a member of the Labor group, is also a member of a variety of other, and often conflicting, groups. Some are Republicans, others are Democrats; some are conservative, others are radical; some are churchmen, others are freethinkers; some are Catholics, others are Protestants or Jews; some are white, others are black or yellow; some are educated, others are illiterate; some are unionized, others are not. In brief, they are not an effectively unified group within the American population, but a cross section of it. Therefore Labor itself is made up of a number of divergent groups, and it is never possible for all of them to be solidly united. Labor does not constitute a force, but an endless and overlapping series of forces. It is a mesh of internal stresses and strains—an economic parallel to political democracy. Labor problems, consequently, exist in infinite number and variety, ranging in importance from trifling incidentals to monumental questions which are fundamental to the continuance of the national life. They are the primary economic problems of most of the people.

## THIS BOOK

Some of the recent textbooks on the subject have endeavored to cover all this great variety by presenting an encyclopedic exposition. This has tended to produce an atomization of the subject which has obscured the broader picture. This volume is an attempt to reduce the vast detail of Labor Economics to a comprehensible sequence of ideas within one general frame of thought. The problems of Labor Economics are homogeneous only in that they are all related within the field of employer-employee relationships. They are age-old conflicts between management and labor—repetitious interferences with the smooth operation of the national economy. Every labor problem involves the efficient relationship of employer and employee, and that is the only significant factor which ties them all together.

Within the broad limits of the subject are narrower fields of pure economic analysis, of political expediency, of social welfare, and of moral judgment. To segregate these special approaches to labor problems, and to treat them in isolation, is to run the risk of rendering them unreal and untrue. However, during the following pages, the needs of exposition require that emphasis be placed upon one or another of these approaches at different times.

A good deal of economic theory lies back of the reasoning in the following pages, but never is the theory stated for its own sake. It appears only when necessary to explain a situation. Theory, after all, is a tool of economic analysis—a very fine tool, but a tool nevertheless. Good workmanship requires fine tools and cannot be accomplished without their use, but in the best craftsmanship the marks of the tools do not show. So also with labor history, which appears only when contemporary practices cannot be understood without a knowledge of their background and causes. Statistical materials are used sparingly and only for illustrative purposes. Available in almost any library are the latest issues of the *Monthly Labor Review*, published by the Bureau of Labor Statistics of the United States Department of Labor, as well as other publications of the Bureau and of the

various state agencies. These provide, in readily accessible form, current statistical and factual data more up to date than can be found within the covers of a book. The book is more concerned with the giving of facts and ideas which will make possible a useful understanding of the current data as they are issued.

The actual jargon of the job and of labor relations is used with relative freedom, and the solemnity of academic language is reduced to a minimum. But for the intelligent reader who does not plan a career in labor relations, as well as for the prospective labor economist, an understanding of the real language used by the spokesmen for labor and management in their dealings with each other is necessary. No apologies are made, therefore, for the occasional slang phrases which appear from time to time. Some slang is as untranslatable for the labor economist as terminological Latin is for the botanist.

The book is frankly descriptive, but at the same time it is analytic, in the sense that it strives to show just what the real labor problems are, and synthetic, in the sense that it attempts to give some clue as to the meaning of it all. It does not seek to give all the facts or to follow all the bypaths or ramifications which constantly tempt the student into digressions. It tries to avoid losing the forest for the trees because only thus can labor problems be seen in their proper relation to the other factors in the economy.

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## Part One

### LABOR PROBLEMS

The various problems of employment and unemployment, of wages, of hours, and of working conditions are fundamental in the sense that they are common to all labor, whether organized or not. Strictly speaking, these are the only ones which are properly called "labor problems." Those other problems which arise out of the fact of unionism are "labor problems" only when viewed by the employer; when viewed by labor they are "employer problems." These latter are discussed in this volume, under the more appropriate title of Collective Bargaining, in Part Two. As will be seen, some labor problems become collective-bargaining problems, but many others remain outside the immediate sphere of the bargaining process.



## *Chapter 2*

# *UNEMPLOYMENT, UNDEREMPLOYMENT, AND UNEMPLOYABILITY*

### EMPLOYMENT VERSUS UNEMPLOYMENT

Of all the people who are responsible for the support of themselves or their families the vast majority work for wages. Of these, all but a few have either no income or insufficient income if their wages cease. The continuity of the receipt of wages is thus necessary to their existence. The first requisite to the receipt of wages is the possession of a job, which is therefore the center around which most lives revolve. Even though many individuals enjoy their work, the fact remains that they work for money to spend. If, as is often the case, the worker's cash reserve is nonexistent or low and if the job is irregular, then his spending power is irregular. To a very large extent the job determines the place and style of residence, the form of recreation, of community participation, and the nature of individual thought.

The worker who has held the same job over a period of years tends to acquire a progressively stronger feeling of proprietorship over the job—it becomes “his” job. As he puts more and more of the best years of his life into it, he acquires a psychological vested interest in it. Only in a very limited sense is the employer giving him anything; on the contrary, the employee feels that he is giving everything he has to the job.

Out of these facts arises a craving for security, both economic and psychological. Some men prefer to gamble with their economic fate, but as they grow older and acquire family responsi-

bilities, most seek a reasonably assured continuity of income—security. The yearning for security is probably the most important economic fact in the world. It is the only assumption upon which any person can make any plans whatsoever. The businessman is faced with the same problem, but with him it is usually less intense and less immediate. Normally he has some reserve or some credit so that he has less prospect of the poorhouse or the morgue than has the comparatively propertyless worker. The latter lives his entire life haunted by the fear of unemployment. Without a job he faces collapse. Without 10 million jobs the nation faces collapse. Even when there are plenty of jobs, the individuals and the nation are never wholly free from the threat of the catastrophe of unemployment.

The greatness of the threatened catastrophe lies in the fact that unemployment extends its evil influences far beyond the purely economic. Certainly, people work in order to secure the economic means of life. But, by and large, they also work because of pride and social pressure, because they like to work, and because of what Thorstein Veblen called “the instinct of workmanship.” If men were purely economic in their motives, it is possible that they all might choose to be burglars. But a man likes to be esteemed by his neighbors, and he likes to do a job and do it well.

The real rock-bottom issue is as plain  
As the plain people: a job at decent wage,  
Without paternalism or patronage,  
That meets the cost of living and can sustain  
A family's self-respect; a decent place  
To hang your hat: have children; under God  
Make yourself more than a robot or a clod;  
Be a real member of the human race.<sup>1</sup>

To be prevented, by involuntary unemployment, from supporting himself and his family is a calamity to himself and to the nation. When this calamity is multiplied by the millions, the

<sup>1</sup> From “The Stairway of Surprise,” by William Rose Benét, 1947. Courtesy of Alfred A. Knopf, Inc.

nation is moved to the verge of demoralization if not extinction.

The necessity of full employment to the national welfare has long been recognized. Sooner or later, everything that the workers receive is expended. Wages therefore become the base of the nation's buying power. Whoever is without a job is without wages, and the national buying power is reduced by approximately that amount. Widespread unemployment, therefore, drastically reduces the area in which industry can sell its product. Unsold goods accumulate, hungry men line the streets, poverty invades the home, crime is bred, public funds are diverted to relief, and the morale of the nation is shaken. In 1932, during the first presidential campaign to be conducted in the midst of widespread depression in this century, both candidates recognized the overwhelming importance of unemployment. Herbert Hoover said: "There is no economic failure so terrible in its import as that of a country possessing a surplus of every necessity of life in which members, willing and anxious to work, are deprived of these necessities." And Franklin D. Roosevelt said: "Every man has a right to life; and this means that he has also a right to make a comfortable living. He may by sloth or crime decline to exercise that right, but it may not be denied him. We have no actual famine or dearth; our industrial and agricultural mechanism can produce enough and to spare. Our government, formal and informal, political and economic, owes to everyone an avenue to possess himself of a portion of that plenty sufficient for his needs through his own work." Later, in a message to Congress in 1938, President Roosevelt said: "The liberty of a democracy is not safe if its business system does not provide employment and produce and distribute goods in such a way as to sustain an acceptable standard of living." The all-embracing significance of employment was best and most succinctly stated by William H. Beveridge: "Who can doubt that full employment is worth winning, at any cost less than the surrender of those (essential) liberties? If full employment is not won and kept, no liberties are secure, for to many they will not seem worth while."<sup>2</sup>

<sup>2</sup> *Full Employment in a Free Society*, p. 258.

## UNDEREMPLOYMENT

It might be inferred from the preceding paragraphs that individual workers must be either employed or unemployed. Such an inference is not correct since there often appears a phenomenon known as underemployment. Especially during business depressions, individuals may be classified as employed and may have jobs at a rate of pay which, if worked full time, would yield a living income but which are worked at much less than full time. Certain employees, for example, may work only 3 days each week instead of a previous 6, with a resultant cut in their incomes of 50 per cent. In a depression other work to fill in the week is usually unavailable. Since they nominally hold jobs, they are ineligible for public assistance. As a result, they spend what little they earn on basic essentials such as food and neglect to pay the rent and the doctor. Such underemployment, if it becomes widespread, can wreck not only the individuals involved but also the economy of an entire community.

On several occasions a program of underemployment has been deliberately instigated as a result of erroneous assumptions. The reasoning followed somewhat the following lines: If two men are marooned at sea in an open boat and have but a loaf of bread between them, it is better to share the loaf than to give it all to one and allow the other to starve. Half a loaf is better than none. So also, it was argued, when there are only half as many jobs as there are job seekers, it is better to give each man half a job than to permit half the workers to be wholly jobless. The halving of the loaf of bread is possibly correct, but the analogy is invalid. There is no fixed number of jobs; there is no fixed number of job seekers. In the boat there are no other persons involved directly; in the labor market consideration must be given to the other groups in the economy: merchants, landlords, doctors, dentists, and so on. When all the workers in a community are underemployed, the landlords and the professions are apt to be completely unpaid; the families of the workers, being ineligible for relief of any sort, all suffer; and general demoralization follows the casualization of the entire

working population. It means, further, that the first impact of the cost of unemployment is borne by the working people themselves. Not only is this unfair, it is economically unsound because it also destroys the markets of industry and eventually undermines the finances of the employers.

Such a program of "sharing the work" was advocated in 1933-1934, when the country was in the depths of a great depression, by a group of leading businessmen headed by Walter C. Teagle, then President of the Standard Oil Company of New Jersey. After a bit of experimentation, the committee itself recognized the fallacy of its earlier argument and recommended discontinuance of the program.

Individual share-the-work experiments were conducted by business concerns at various times, but only in unusual instances have they been a success. In general it must be concluded that the dangers of underemployment are nearly as great as, and more insidious than, the dangers of unemployment.

### UNEMPLOYABILITY

Reduced to its simplest essence, unemployment means that individuals who are willing and able to work do not have jobs. But many are not willing or not able to work as employees and are therefore not in the labor market at all. There is not necessarily any stigma to be attached to these since the group includes hundreds of thousands of housewives, who do a full-time job of maintaining their homes and raising their children; the children themselves, who have not yet entered the labor market; old people, who have retired; and the self-employed professional and managerial groups. There are in addition a great many who are mentally or physically incapacitated.

A social stigma may be attached to other groups. Some are unemployable because they are in prison or leading a life of crime or gambling. And there are a few who are just plain lazy and prefer to live as bums, subsisting either upon an inheritance or upon gratuities received, sometimes at kitchen doors.

All these people who are not in the labor market are classed as unemployable and must not be confused with the unemployed.



Statistical agencies, in reporting the volume of unemployment, strive to eliminate the unemployables. But unfortunately for purposes of statistical forecast, the various categories of unemployables do not remain constant. In a period of depression, for example, if the family breadwinner is out of a job, the housewife, young children, and aged people may enter the labor market in an effort to supplement the family budget. A bankrupt enterpriser, formerly classed as "self-employed," may become an applicant at the employment office. And in a war crisis, when wages are high and patriotic pressure is put on everyone to work, similar people look for, and often receive, jobs. In such a case the physically (and sometimes mentally) handicapped discover opportunities for work, and even some of the prison inmates may be released to industry. Thus people who may be unemployable in ordinary times may become employable in times of crisis, swelling the labor supply to abnormal size.

It is perhaps correct to assume that there is a large group of individuals who are permanently and completely unemployable, and that there is another large group of "marginal unemployables"—persons who are normally not in the labor market but who will enter it if the pressure and opportunity become sufficiently great.

Inevitably there is another group which, although still to be classed as unemployed, is on the verge of becoming unemployable. Woytinsky describes this border-line group as follows: "A worker's chance for reemployment is affected by the duration of his unemployment. The probability is highest for him in the first few weeks after separation, and diminishes slowly for several months until a deadend is reached with but little hope of ever being reemployed. Thereafter the worker becomes part of the 'hard core' of unemployment."<sup>3</sup> After being in this stage for a time, if not reemployed, workers tend to drift into a state of unemployability.

<sup>3</sup> W. S. Woytinsky, *Recent Trends in Labor Turnover, their Causes, and their Effects on the Labor Market* (Memorandum, Social Science Research Council), 1939. See also the same author's *Three Aspects of Labor Dynamics*, p. 67.

## CARE OF INDIGENT UNEMPLOYABLES

Those unemployables who have an adequate means of support do not constitute an economic problem. Those, however, who are without means must be given brief consideration here. Their problem would never be a labor problem, but would be a matter of social welfare primarily, were it not for the fact that, under unusual circumstances, they temporarily enter the labor market. In order to enable them to do their best and perhaps to become useful workers for the length of their working lives, they must be given intelligent attention prior to and during their periods of unemployment. It has been said that "the unemployed of today are the unemployables of tomorrow." While this is an exaggeration, there is undoubtedly some truth in it. The breakdown of morale which frequently accompanies a long period of hopeless unemployment often leads to a state of permanent unemployability. Impersonal and adequate public relief is required for emergency cases; a greater development of institutional care is needed for the more helpless cases. Rehabilitation and retraining programs can save many individuals from the gutters and the morgues. The United States spends vast sums after a war in rehabilitating its returned veterans. It might spend half as much in rehabilitating its unemployed after a depression. Such an investment could more than repay itself in the reduction of the costs of crime alone.

## THE RESPONSIBILITY FOR UNEMPLOYMENT

Even if we eliminate the unemployables, there still remain many individuals whose unemployment may be attributed to ineptness or indifference. These, presumably, must bear the responsibility for their own misfortunes. The vast bulk of unemployment, however, arises out of frictions in the functioning of the economic system, and many of these frictions, in turn, arise out of short-sighted or erroneous decisions made by business or labor leaders or by government officials who have unwisely submitted to pressures from self-seeking groups. Thus management and

unions must accept substantial shares of the responsibility for unemployment.

To an unmeasureable but real extent, unemployment may exist because of the fact that the personal knowledge of an executive is apt to be limited by the pressures of immediate work and present gains and the further fact that personal or business advantage does not always coincide with public welfare. A business manager may advance the fortunes of his firm by a policy that inevitably stimulates unemployment; a union may gain in its visible strength and bargaining power by restricting the number of job holders. Even though their intentions may be of the best, it is seldom that either industry or labor is in a position to see the over-all public interest.

For these reasons the public, speaking through its government, must set certain guideposts to indicate the course of action which will in the long run be in its broader interest.<sup>4</sup> The public, in any such case, must be thought of as including all persons and groups not directly concerned in a specific question, and therefore its ultimate interest, in this regard, is an employment opportunity for all persons willing and able to work. The public has, and can have, no authoritative voice except through its government; any limitations upon its democratic control of government are restrictions on its voice.

The assertion that government must assume the primary responsibility for employment and unemployment raises the spectres of paternalism and of bureaucratic delay, of lobbying and of personal advantage, of governmental cumbersomeness and incompetence, and of potential dictatorship. These are serious dangers, but they are no greater, and no different, from the dangers inherent in the democratic process. They may be avoided, not by denying the responsibility of government, but

<sup>4</sup> For interesting discussion of these matters see Sumner Slichter, "The Responsibility of Organized Labor for Employment," *American Economic Review*, "Proceedings," XXXV (May, 1945), pp. 193-208; and "Comments on the Murray Bill," *Review of Economic Statistics*, XXVII (August, 1945), pp. 109-112. See also the testimony of various persons in Senate *Hearings on Full Employment Act of 1945*, Revised, S. 380, USS, 79th Congress, 1st Session, Government Printing Office, Washington, D. C., 1945.

by insisting upon full democracy. As long as a majority of the people retain the right, even though it be indifferently exercised, of changing their executive and legislative leaders, the dangers of regimentation by government cannot be critical. Apparently such public apathy must be risked since there is no democratic alternative. Since individual business concerns and individual unions cannot be expected to see and follow the course of public interest in all cases, the responsibility of attempting to do so must fall upon government. Protection against abuse cannot be found in denying the duty of government, but in maintaining a responsive and responsible government. It only can possess nationwide vision, nationwide interest, and nationwide powers of guidance and compulsion. It only can gather the vast fund of information necessary to planning full employment, can interpret those data in terms of the general welfare, and can put pressure upon individual groups and persons to promote the likelihood of the success of its program. Unwise governmental policies can create widespread unemployment; increasing wisdom in government can reduce unemployment.

It should also be noted that the government does not have a monopoly on "bureaucratic bungling." Business is full of it, without being obliged to make a public accounting of it. In comparing the honesty of government and business officials Abraham Lincoln said: ". . . with however much care selections may be made, there will be some unfaithful and dishonest in both classes. The experience of the whole world, in all bygone times, proves this true. The Saviour of the world chose twelve disciples, and even one of that small number, selected by superhuman wisdom, turned out a traitor and a devil. And it may not be improper here to add that Judas carried the bag—was the subtreasurer of the Saviour and His disciples."<sup>5</sup>

Since the people can speak as a group only through their government, the government has an absolute obligation to concern itself with both unemployment and underemployment and to adopt such measures as may lead to full and steady employment. The resultant recourse to bureaucratic manipulation has

<sup>5</sup> From remarks at Springfield, Ill., in 1839.

## LABOR PROBLEMS

LABOR FORCE OF THE UNITED STATES  
(In thousands of persons)

Year	Total	Employed	Unemployed	Military
1900	28,283	26,678	1,605	
1901	29,204	27,527	1,677	
1902	30,138	29,650	488	
1903	31,063	29,577	1,486	
1904	31,816	30,420	1,396	
1905	32,850	32,244	606	
1906	33,831	33,971	-140	
1907	34,802	34,064	738	
1908	35,739	33,495	2,244	
1909	36,601	35,899	702	
1910	37,271	36,731	540	
1911	37,835	36,298	1,537	
1912	38,278	37,377	901	
1913	38,711	37,714	997	
1914	39,016	36,845	2,171	
1915	39,325	37,015	2,310	
1916	39,569	39,385	184	
1917	40,030	41,929	-1,899	
1918	40,384	43,430	-3,046	
1919	40,459	41,314	-855	
1920	41,236	40,687	549	
1921	41,803	37,093	4,710	
1922	42,343	39,411	2,932	
1923	43,165	42,340	825	
1924	43,981	41,858	2,123	
1925	44,457	43,507	950	
1926	45,444	44,813	631	
1927	46,455	44,651	1,804	
1928	47,464	45,395	2,069	
1929	47,920	47,236	684	
1930	48,595	45,407	3,188	
1931	49,062	41,600	7,462	
1932	49,485	37,572	11,913	
1933	49,928	37,403	12,525	
1934	50,383	39,736	10,647	
1935	50,781	40,631	10,150	
1936	51,151	42,506	8,645	
1937	51,511	43,666	7,845	
1938	51,936	41,240	10,696	
1939	52,396	43,144	9,252	354
1940	52,789	45,166	7,623	433
1941	53,090	47,280	5,710	1,426
1942	53,850	51,110	2,740	3,052
1943	53,550	52,630	920	8,409
1944	52,060	50,490	1,570	11,034
1945	51,930	51,160	770	12,092
1946	55,660	52,950	2,710	4,360
1947	60,650	54,060	2,420	1,530

Sources: Figures for censal years from U.S. Census and John P. Herring

Figures for noncensal years, 1900 to 1940, from John P. Herring, University of Washington. Figures are adapted to the extent that decimals have been rounded off. *Minus* unemployment existed when persons not ordinarily in the labor market were occupying jobs.

Figures for years 1941 and since from U.S. Bureau of Labor Statistics, *Monthly Labor Review*, various issues. All military figures from same source.

It should be noted that most of the figures given in this table are estimates. Since exact figures do not exist and since methods of estimating vary, precise accuracy is impossible. The table, however, fairly indicates the important trends.

its admitted hazards. These can be controlled, however, through democratic procedures and are not as great as the hazard of continuing unemployment, for chronic unemployment, more than any other one thing, has the greatest potential power of destroying democracy itself. In spite of a frequent assumption to the contrary, free enterprise and political democracy do not require adherence to economic anarchy. Rather, democracy in its very nature is obliged to restrict the individual for the protection of the group, and the group cannot continue to exist forever as an economic society unless full employment is available to it.

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## Chapter 3

### TRANSITIONAL UNEMPLOYMENT

#### GENERAL CAUSES OF UNEMPLOYMENT

The causes of unemployment are as numerous as the sum of the number of economic phenomena and the number of idiosyncrasies of the human mind. But these myriads of causes do fall into a general pattern as principal types. And unless these types are given a certain reasonable classification, they cannot even be talked about. Bearing in mind that these types are neither rigid nor mutually exclusive, one can describe unemployment in two general categories: *transitional*, which arises out of the fact that individual workers frequently change from one job to another or from one job at one time to the same job at another time, and *structural*, which arises out of the absence of consistent balance in the structure of the national economy and which is more apt to be long-term or even permanent. Transitional unemployment arises out of nature, human and physical, and while its volume may be reduced, it probably cannot be eliminated in a free society. Only if workers were "frozen" in their jobs could it disappear. Structural unemployment, on the other hand, exists because the economic structure of the nation is imperfect. It can therefore be reduced only as the structure is improved in the direction of greater perfection. The difference between the two categories is therefore fundamental. The present chapter deals only with the first.



## NATURE OF TRANSITIONAL UNEMPLOYMENT

On any given day there are always many workers who are in transit from one job to another and who are, on that day at least, temporarily unemployed. Out of this fact arises the phenomenon that should be called by the name of "transitional unemployment."<sup>1</sup> It has two primary characteristics: that the unemployed individual has a justifiable reason for expecting to return to work after an anticipated layoff and that it cannot be wholly prevented under any reasonable circumstances, even in a planned economy. For purposes of exposition, it may best be described in three subcategories: turnover, casual, and seasonal unemployment.

## TURNOVER UNEMPLOYMENT

The simplest form of transitional unemployment is that which results from what industry calls normal turnover. Industries are continually employing individuals who either prove unsatisfactory to the management or who find the job unsatisfactory. These instances usually result in either a discharge or a quit. Except in times of widespread unemployment, the individual so severing his occupational connection is usually justified in expecting a new job within a reasonable time. Frequently, indeed, the individual quits in order to be free to accept another opportunity which has been offered him or which he thinks will become available. In such case he may deliberately allow an interval between jobs for a vacation or for attention to personal

<sup>1</sup> The United States Bureau of Labor Statistics gives the name of "frictional unemployment" to that unemployment "arising from delays in changing jobs and filling job openings rather than from a lack of employment opportunity." (*Monthly Labor Review*, January, 1947, p. 1.) Although a few other writers have followed this terminology, I have rejected the use of the term "frictional unemployment." All unemployment, most of which certainly arises out of "a lack of employment opportunity," results from economic or social friction of some sort, and the term therefore lacks sufficient incisiveness and explicitness to characterize any particular kind of unemployment.

business. Only one such day may intervene, and yet if the census taker were to question him on that day, he would classify him as unemployed. Statistical data are inadequate since they do not reveal the volume of such turnover unemployment. But the numbers probably run as high as three-quarters of a million persons in the United States, accounting for an irreducible minimum of unemployment. That is to say, even when "full employment" prevails, there will be some people who are technically unemployed because of being in transit from one job to another. Only when the other job fails to materialize do these individuals create a problem which requires solution.

Turnover is the great proving ground in which the job tests the worker and the worker tests the job. It is an essential element of democratic freedom and is worthy of careful preservation. Corrective measures are desirable only to avoid unnecessary prolongation and consequent conversion to more permanent forms of unemployment. In periods of business depression, the worker is more apt to make every effort to hold onto his job since the fear of long-term unemployment hangs over him. In periods of relative prosperity, however, the worker may quit on a whim, knowing that another opportunity awaits him just around the corner. During an intense national emergency such as is usually precipitated by a war, labor demand increases, relative supply decreases, and wages tend to rise rapidly. Without some governmental restrictions, turnover is apt to increase markedly at such a time. At the same time it must be remembered that the length of the typical period of unemployment shortens to a negligible few hours or days when labor is in great demand so that governmental intervention is necessary only in extraordinary circumstances.

During periods of declining wages and increasing unemployment, individual workers may be expected to hold their jobs if possible, but when they do find themselves laid off, the period of turnover unemployment may lengthen until, instead of turnover unemployment, it becomes cyclical unemployment, a type to be discussed in later pages. Different types of unemployment are found to overlap constantly since the difference lies chiefly in point of emphasis.

## CASUAL UNEMPLOYMENT

Many business operations are highly irregular, varying from day to day and from hour to hour. Perhaps the most familiar type of casual worker, employed from hour to hour, is the man who comes to mow the lawn, spade around the roses, or wax the floors. This type is so familiar that it is not always realized that hundreds of thousands of American workers, many quite highly skilled, are equally casual in their employment. Longshoremen, the men who load and unload the cargo ships, provide a good example. The coming and going of ships must be irregular. While many vessels operate on regular schedules as "liners," others are "tramps" and go as the cargo directs. Since the volume of cargo to or from a port cannot be controlled by the steamship companies, but is dependent upon business conditions, seasons of the year, and a multitude of other factors, the companies cannot arrange to have an even flow of freight. Further, even the modern developments in marine architecture, in technology, and in navigation have not eliminated the influence of wind and weather. A strong blow may detain ships for days at a time, upsetting the schedules of liners completely. This may result in several days with a minimum of activity in a port, to be followed by a sudden rush of work. When the ships do get in, their owners are anxious to work cargo as rapidly as possible and get to sea again, since port charges are high and the ship is earning nothing when riding at anchor. When many ships come in at once, the need for longshoremen becomes suddenly great. When few ships are in, the docks are quiet and there is little work available. Longshoremen, then, never know when or how long they are to work. This irregularity applies also to the more skilled winch drivers, checkers, and ship clerks. A man may work 200 hours during one month and not at all the next. Or he may work 12 hours in one day and not at all during the following week.

The uncertainty of the individual's income is not the only problem arising out of the casual nature of this work. There is also the problem arising out of the fact that it is necessary to maintain in the port a supply of longshoremen larger than will

be used except in emergencies. Suppose the labor requirements of a port vary from 500 to 1,500 longshoremen, with 1,000 as the average. It is not enough if there are only 1,000 longshoremen available; there must be 1,500. And yet there will be only rare instances when all are employed. The excess above the "normal labor force" is called the "labor reserve." It is essential to the successful operation of fluctuating businesses. Business itself requires this reserve. In many ports arrangements exist whereby longshoring jobs are rotated, that is, registered workers take turns at working. In a limited sense this rotation "decasualizes" longshoremen as individuals. However, the volume of work remains highly variable so that the frequency in which a job opportunity is presented to each longshoreman continues unpredictable. In the sense that the entire group of waterfront workers in a port is continually faced with the prospect of underemployment, the longshoremen remain casual workers.

In spite of the intermittent nature of their employment, however, longshoremen tend to remain attached to the industry in the majority of cases. Normally they are permanent residents of the community in which they work and live exclusively from the intermittent earnings of longshoring. A similar situation exists with many workers in the steel industry and in a wide variety of other industries. There is, however, another group of casual workers who are also migrants. These migratory casu-als, indeed, were originally the only ones to bear the name, having been brought to the attention of scholarship by Carleton Parker's famous essay on *The Casual Laborer*.<sup>2</sup> Until the 1920's, most of these were homeless single men who traveled continually, going from job to job. In part the pattern of their travel was determined by seasonal changes, but they lived from day to day, working in the logging camps, the mines, in agriculture, and in whatever job appeared. As bindle stiffs they were a familiar sight along the railroad tracks and were often confused with hoboes. The latter were not workers but were simply indigent gentlemen of leisure.

With the increase in the use of automobiles in the 1920's, fewer bindle stiffs were seen on the railroad tracks, and more

<sup>2</sup> Published in book form in 1920.

migrant families, traveling by jalopy, dotted the highways. Although principal attention has been given to the place of these migrant families in agriculture, they form a large part of the fluid labor supply of urban industry. In other words, they form the great labor reserve pool from which all sorts of industries draw their emergency supplies of labor. As such, their existence is essential to the successful operation of American industry as it is now conducted.

And yet, although they are essential, their lives are spent in the shadow of hardship, poverty, malnutrition, and disease. Through epidemics and pilfering, in slums and ditchbank camps, they spread their woes into the body of the community in which they may happen to be, constituting a continually festering wound in society. The economy cannot live without them and has not yet learned to live with them.

Public-housing and public-health projects have helped remove many migrant casuals from the pariah class; the Employment Service has made steps toward stabilizing their employment through an intelligent routing to new jobs; and higher wages have given them a closer approach to a cash reserve. But the problem is still present, and the need for them is still great.

The necessity for a labor reserve means a permanent condition of casual employment, with its concomitant unemployment, for several million workers and their families. There are always some persons who are casually unemployed. Most of them, with some correctness, do not expect to remain unemployed for very long, but none can be sure.

All too frequently, employer groups have deliberately encouraged the presence of a larger than necessary labor reserve as a device for keeping wages down.<sup>3</sup> An immediate supply of unemployed workers, especially if they are not unionized, constitutes a tremendous depressing force upon wage scales. An unemployed man whose children are hungry will usually work for a low wage rather than receive no wage at all. This is one reason why large industrial employers, in the 1880's and '90's, insisted upon im-

<sup>3</sup> According to the public press, the National Association of Manufacturers has advocated the desirability of maintaining a "float" of unemployment. This "float," apparently, is the labor reserve discussed above.

porting masses of ignorant immigrants from the nonindustrial areas of Europe and Asia. It is also the reason why the American Federation of Labor fought for the restriction of immigration. In more recent years, large employers of agricultural labor have sought to maintain a labor reserve sufficient to guarantee against demands for wage increases. This has led unions, in self-defense, to attempt to secure some control over the labor supply. It follows that, although some labor reserve appears to be essential to the operation of industry, the reserve does not need to be anywhere near as large as it has often been in the past. An intelligent routing of casual labor, from job to job, can provide the benefits of a labor reserve with a minimum of disadvantage to the workers.

### SEASONAL UNEMPLOYMENT

Possessing some of the attributes of casual unemployment, seasonal unemployment differs by involving longer periods of full work and longer intervening periods of no work and by being more predictable. It arises out of the inescapable fact that certain industrial operations are, and apparently must be, geared to the changing seasons of the year. Agriculture and the attendant processing industries offer the most obvious illustrations. In spite of the recent technical advances, such as the growth of plants in chemical solutions and under artificial "sunshine," it appears likely that the vast bulk of the nation's food must continue to come from the soil and that the sun and the rain will continue to dominate its growth. In no place can diverse food crops be grown with equal facility and abundance throughout the year. Seasonal weather changes must be accepted as conditions that will determine the dates of planting, harvesting, and processing. This being so, the work involved must also be seasonal. In nearly all parts of the United States, the harvesting of ripe tomatoes will continue to be done in August and September, and the canning of the numerous tomato products will be done immediately after the harvest. Thousands of other agricultural products also involve seasonal work.

Weather makes a difference with nonagricultural industry, too.

In the Northern states, at least, outdoor construction is halted by winter storms. Highway paving may be possible but is uneconomical when done in a blizzard. Logging operations are often halted during a dry summer because of the forest-fire hazard and more frequently during the winter because of heavy snows.

There are still further seasonal variations attributable to industrial customs and social idiosyncrasies. Changes in style require clothing manufacturers to await the fashion dictates and the public whim before settling into steady operation. Style has a similar effect upon a multitude of commodities, from hats to greeting cards. Retail trade is notoriously affected by seasonal influences, from the Christmas rush to the summer-holiday lull. An extreme illustration is provided by those summer-resort communities which are dependent entirely upon seasonal trade.

When all these factors of weather and custom are taken together, the result is a wide fluctuation in total employment from season to season. The nation reaches its lowest ebb of employment in January, experiences a peak in June, a slight drop in midsummer, another peak in September, and then starts its usual winter decline. Actual and complete statistics of seasonal unemployment for the nation have never been determined, but careful studies of selected states suggest that at least 3 million American workers are primarily engaged in seasonal occupations and never work throughout the entire year.

Many seasonal workers have no interest in continuous employment. Housewives and high-school children may work in the canneries during the summer and, then, at the close of the canning season, withdraw entirely from the labor market until the following year. These people, of course, cannot be properly classified as "unemployed" during the time when they are not working since they become, for the time being, "unemployables." They derive their principal support from some other source, usually from the steady wages of the man of the family. If, however, the entire family income is derived from seasonal work, then they must either live on the earnings derived from seasonal operations or must move from place to place or from industry to industry.

This has resulted in great mass migrations of people, who re-

peat much the same course each year, following the crops as the seasons change. Regular routes have developed: from Florida north to the cranberry bogs of Massachusetts, from Texas to the onion fields of Ohio, from southern California to the orchards of the Okanogan Valley on the boundary of the state of Washington and British Columbia. From south to north they move each year, harvesting the different crops as they mature. During the winter, most of them gravitate to the big cities where they often become a serious problem for the relief and welfare agencies.

Spectacular attention was drawn to these migrant agricultural workers (who are both seasonal and casual) some years ago by John Steinbeck's *Grapes of Wrath*,<sup>4</sup> which focused the national attention upon the situation in California and which stimulated both research and action programs. Although the problem has existed in all parts of the United States, it has been especially critical in California where there are many large ranches with diversified crops and where the successive harvest seasons follow each other throughout the year. Agriculture in California employs in January something over 50,000 workers (other than "farmers") and in September well over 200,000. Of the latter, at least 50,000 must be migrants. The remainder is drawn from among the permanent residents of the adjacent area. But no significant agricultural area in the state possesses a large enough permanent population to harvest its crops. Migrants must come in, or the crop is lost. Thus seasonality, like casual work, requires the maintenance of a labor reserve, even though the members of that reserve must travel thousands of miles in order to fulfill their mission.

The very existence of transitional unemployment is evidence of the importance of a labor reserve, some measure of which appears inevitable in the operation of modern industry. Presumably it was this fact which first suggested to William Beveridge the idea that unemployment is a "problem for industry"—that industry creates it, requires it, and therefore has the obligation of solving the problems inherent in it. Individual industries and concerns have already done much and undoubtedly can do more, but a study of the means by which transitional unemployment

<sup>4</sup>The Viking Press, Inc., New York, 1939.



can be reduced will show that industry cannot entirely eliminate it.

### STABILIZATION OF OPERATIONS

Transitional unemployment, in all its forms, is largely the result of irregularity of industrial operations. Although many of these operations cannot be fully stabilized so that the same number of persons are employed throughout the year, individual business concerns have found that they can, by conscious effort, reduce irregularity. Vegetable canneries have gone a long way toward demonstrating that even this most seasonal of industries can achieve partial stabilization. By concentrating exclusively on the perishable crops during the harvest season and by developing a number of other products manufactured from less perishable materials (such as baked beans and bean soup) for winter-season operations, a number of canneries have achieved year-around operation with a minimum of seasonal unemployment. A number of other industries, including automobile, clothing, and greeting-card manufacturers, have also achieved notable success with programs of stabilization.

Waterfront employers, in collaboration with longshoremen's unions, have reduced some of the worst features of casual employment in their industry by rotating jobs among eligible employees and, at the same time, raising the hourly wage rate to compensate, in part, for the anticipated periods of unemployment. That is to say, they have "shared the work," but with an accompanying upward revision of wages to provide a more nearly adequate annual income to the workers than is found in a "share-the-work and share-the-wages" program. Waterfront employers have been obliged to learn that they require a flexible labor reserve and must be prepared to pay for it.

Individual business concerns and industry associations have frequently taken the lead in developing more nearly regular operations, having found it profitable and more efficient to do so. It is apt to be more profitable if it results in a fuller utilization of capital equipment; more efficient if it provides a steady, trained, and experienced labor force. Frequently the initiative has been taken by labor unions, interested both in the welfare of the work-

ers and in the steadiness of membership. Very seldom, however, could a union accomplish much in the stabilization of industry unless the cooperation of management were freely given. Since 1936, for example, the millinery manufacturers and unions in New York have maintained a Millinery Stabilization Commission charged with the duty of finding ways in which the operations of the industry can be regularized. Again, the International Ladies' Garment Workers' Union has consistently urged employers to stabilize and has cooperated with all efforts in that direction. There are many other similar instances.

Government has taken a few tentative steps in the encouragement of stabilization. In 1934 the state of Wisconsin put into effect an unemployment compensation act which, among other things, provided for a reduction in the tax rate paid by employers whose operations were steady and caused little unemployment. This device, known as "experience rating," was made permissible to states under the Federal Social Security Act of 1935 and is widely used. Although it does provide encouragement to employers to regularize, the possible benefits are not sufficient to induce employers to make heavy expenditures in reorganizing their operations, and the results have not been spectacularly successful.<sup>5</sup>

After all that has been done and after all that is likely to be done, casual and seasonal unemployment will undoubtedly remain as major problems of the economy. Technical inventions have not yet eliminated the importance of the weather to human life.

### EMPLOYMENT OFFICES

The interval of time between jobs, which results from normal labor turnover, may be reduced in a number of ways. The operation of a nationwide system of employment offices to enable the idle worker to find the vacant job is the most effective. For many decades the United States was content to rely upon privately operated hiring halls, run for profit as business ventures. These establishments acquired so bad a reputation that it became cus-

<sup>5</sup> See also C. A. Myers, "Experience Rating in Unemployment Compensation," *American Economic Review*, XXXV (June, 1945), pp. 337-354.

tomary to consider them as suspect unless they proved their integrity. The very nature of their work encouraged them to engage in petty graft and cheap duplicity. Their income was (and is) ordinarily derived from a fee consisting of a percentage of the first week's wages. It is obvious that the income of the employment agency can be increased by stimulating a more rapid turnover of labor in the plants that use its services. This can be accomplished by splitting the fees with the foremen of those plants who have the power to hire and fire. The result is that management and labor both lose; no one gains but the foremen and the employment agency. Even within the hall whose management was honest, opportunities for petty swindling were everywhere. The clerk at the desk could show favoritism to those applicants who soothed his palm with surreptitious silver.

Even though many of these abuses were removed in some states by licensing and inspection, the profit-making agencies suffered from an inherent defect. Each was able to fill only those vacancies which were listed with it by specific employers and could fill them only with those applicants who came in and filed. Its area of knowledge was therefore strictly limited. Competing agencies could hardly be expected to cooperate. Thus one agency might not know of a vacant job across the street or of a jobless man around the corner.

The inefficiency and costliness of these agencies led many firms to operate their own recruiting offices—establishments not practicable for the small employer, and probably unnecessarily expensive even for the large. More frequently, hiring halls were established by employers' associations, designed to provide labor for the entire industry in the area. These suffered from much the same sort of petty graft as beset the profit-making agencies and, in addition, acquired a bad name among workers for their part in breaking unions by securing strikebreakers and other antiunion employees.<sup>6</sup>

In cases where unions are strong, responsible, and democratic, union-operated hiring halls have been satisfactory to all concerned, furnishing labor to the employers and enjoying the confi-

<sup>6</sup> For example, see William S. Hopkins, "Employment Exchanges for Seamen," *American Economic Review*, XXV (June, 1935), pp. 250-258.

dence of the employees. Obviously, an employer who is engaged in fighting a union will object to using the services of a union-controlled hall, but increasingly those objections have been disappearing. In certain instances, the union-controlled hall can provide employment service of a higher order than any other type. Consider, for example, the employment of seamen for off-shore vessels. Unquestionably, the employer is interested in the quality of his seamen since the safety of his ship depends upon it. But the interest of the seamen is even greater, for their lives are at stake. Any competent sailor is unwilling to sail with a crew of incompetents. Thus no one, not even the employer, has a greater direct interest in the honest dispatching of competent seamen than the seamen themselves. Therefore, if a union-controlled hiring hall for seamen is intelligently and democratically administered, the most efficient manning of merchant vessels can be accomplished. Of course, the public, which includes both travelers and shippers, has a direct and imperative stake in the matter, and if the union hall is not operated efficiently, the public has every right to take it over.

In few industries do the employees have as great an interest in the efficiency of other employees as in the operation of steamships. However, there is nearly always some such interest, which demonstrates clearly that the employer, at any rate, is not the only interested party.

Employer associations and unions have jointly operated hiring halls in a number of instances. This system has the advantage of giving both parties the right to check the records of the hall and to influence policy but suffers the disadvantage of being a constant source of friction between them. Its success depends in large measure upon the personalities representing both sides, and it is thus impossible to generalize about its measure of success.

Hiring halls operated by employers, by unions, and jointly by both suffer from the basic defect of profit-making halls in that they, too, are restricted in their area of knowledge of vacancies and of applicants. This fact, coupled with the unsavory reputation acquired by private agencies through the frequent cases of dishonesty, led to experimentation with state-operated employment offices. Although this program began as far back as 1890,

no adequate system of free hiring halls operated by state governments appeared until some years after the First World War. Private operators fought the program bitterly, and legislatures appropriated inadequate funds so that the employment offices were few, scattered, and ineffective.

Upon the United States' entrance into the First World War, the clear necessity of a national employment system became apparent. The sudden stimulation of industry, coupled with a diversion of man power to the armed services, threatened a drastic labor shortage with which the haphazard employment offices could not contend. The United States Employment Service, operated on a joint state-Federal basis, was created to meet the new demand for labor. It was, however, a short-lived experiment. The war lasted only 18 months longer, after which the psychology of urgency was dissipated. The staff was untrained, inexperienced, and hastily recruited. Popular opposition to "government in business" rose to hysterical heights. Accordingly, by the autumn of 1919, Congress so curtailed the budget of the Service that it was reduced to a few scattered offices, engaged primarily in farm placements. Since these were primarily charged with finding jobs for discharged war veterans, the Service was soon enmeshed in the politics and corruption which then beset the Veteran's Administration. Although a few Farm Placement Offices continued to give good service, the system as a whole soon became a negligible factor in the labor market and meandered along its inglorious decline until 1933, when the old system died and was replaced by a new United States Employment Service.<sup>7</sup> The new plan was created by the Wagner-Peyser Act of that year and was designed to meet, in part, the unemployment problems arising out of a great economic depression. The Federal government contributed funds on a matching basis (one dollar for each dollar put up by the state), in exchange for which it could require the maintenance of uniform standards as prescribed by the Federal Service. Although the quality and extent of this program varied from state to state, it can be said in general that it was moderately successful, especially in placing men

<sup>7</sup> For a more detailed account, see Ruth Kellogg, *The United States Employment Service*.

in agriculture and women in domestic service and in serving as hiring halls for government-sponsored work and relief projects. Except in a few instances, it never achieved success in placing workers in large urban industries. Its comparative failures may be attributed to three factors: inexperience on the part of the staff, industry resistance to New Deal government agencies, and inadequate cooperation across state lines. The last of these requires elucidation since it is of prime importance.

The offices, although supported in part by Federal funds, were nevertheless operated as state agencies. But state lines do not always coincide with industrial boundaries. For example, Philadelphia (Pa.) and Camden (N. J.) are separated only by the Delaware River. They are fundamentally in the same employment area, yet were served by separate state systems. Other conspicuous illustrations are New York City and Jersey City, Wilmington (Del.) and Chester (Pa.), Portland (Oreg.) and Vancouver (Wash.), and Chicago (Ill.) and Gary (Ind.). Only by following identical procedures and by engaging in perfect cooperation could separate state systems give adequate service in such areas. But since varying political pressures and independent judgments prevailed at the state capitals, Harrisburg and Trenton and Albany, Salem and Olympia, and so on, complete harmony seemed impossible to secure. True, a minimum of Federal standards could be maintained, but as long as the systems were state systems, the details were in each case settled by local politics and expediency. Under the circumstances, it is clear why local agriculture and domestic service were the principal job areas in which the Services were successful.

The public employment offices were blundering along in this halfhearted way until after the Japanese bombed Pearl Harbor on Dec. 7, 1941. Immediately after that incident, President Roosevelt, acting under emergency powers, consolidated all the state systems into one coordinated and centralized national system. This was recognized as necessary in order to meet the tremendous task of furnishing labor to war industries. Subsequently the Service was allied to the War Manpower Commission and served as the latter's agent in the attempt to divert all labor into "essential occupations."

The tremendous responsibility placed so suddenly on the revived United States Employment Service brought problems which might easily have broken it down. It lacked trained staff, facilities, and administrative experience and yet was obliged to develop an effective national program under the terrific pressure of a war emergency. It is a tribute to the usually maligned bureaucracy that it succeeded beyond reasonable expectations. With the records of the Social Security Board to draw upon and with the entire nation as its source of potential labor, it was remarkably effective in manning the crucial war industries. There was every reason to expect that the national system had permanently superseded the older chaotic collection of state systems. Industry, operating under the continuing threat of labor shortage, gave substantial support to the Federal Service and generally agreed that continuance of the Service at least through the period of postwar reconversion was essential.

In spite of this promising outlook, however, the Service came under attack very soon after the Japanese capitulation in August, 1945. Too many private employers stand to benefit from a large labor reserve since unemployed workers, bidding against each other for jobs, can materially reduce wage rates. Representatives of these groups feared that continuance of the Service would guarantee the maintenance of high wages. During the war the Service had benefited the employers through furnishing scarce labor. In peacetime it would chiefly benefit workers through furnishing scarce jobs. The labor unions failed to press sufficiently the case of the workers, and in the Department of Labor Appropriation Act (approved July 26, 1946), the Service was returned to state administration. This was fundamentally based on the assumption that a state Service would be more amenable to local pressures, therefore less efficient and therefore more acceptable to those industries which welcomed depressing influences on wages.

The return of the Service to the states took place on Nov. 16, 1946, in a form that was distinctly incongruous. The plan sought to give essential control to the state governments and yet provided that the total cost was to be borne by the Federal government. The United States Employment Service was retained as a

coordinating agency, with control of the purse strings and the power to require minimum standards of efficiency from the state Employment Services. This put the Federal government in the position of paying the whole bill for maintaining *minimum* standards, while, during the 5 years of Federal operation it paid the same bill and was responsible for maintaining *maximum* standards. The only excuse for the change was political expediency; from the economic point of view the Service should remain on a Federal basis. Partly because of the Federal coordination and partly because of the experience gained during the 5 years of Federal operation, the system of state Services is distinctly superior to the chaos that prevailed before the war, but any future crisis, either militaristic or economic, will undoubtedly necessitate federalization once more.

### DOVETAILING JOBS

In view of the high degree of seasonality prevailing throughout American industry, it is logical to suppose that some regularity of employment can be achieved through the dovetailing of jobs, that is, through providing work for individuals in one occupation during a part of the year and in another occupation during the remainder of the year. The traditional illustration is the proposal that a truck driver could deliver ice in the summer and coal in the winter. Such dovetailing may be planned by either one or several employers, or it may be unplanned and result only from the effort and ingenuity of the individual employee.<sup>8</sup> In practice, very little is planned, largely because of the competitive interests of different employers, the normal abundance of labor, which causes lack of planning to be cheaper to the typical employer, and the restrictions imposed by the jurisdictional lines surrounding labor unions. Undoubtedly further developments on planned dovetailing could be stimulated in the future, and every step taken in that direction, no matter how small, is desirable. But it is unlikely to solve a very large part of the nation's unemployment problem. The fact remains that most seasonal industries experience their annual layoff during the winter. Unless seasonal

<sup>8</sup> Sam Arnold, *Planned Dovetailing of Seasonal Employment*.



layoffs were equally spaced and equally sized throughout the year, dovetailing could not eliminate seasonal unemployment. Only to the extent that seasonal alternations offset each other can dovetailing be planned, and this, in the nature of the case, is strictly limited.

Unplanned dovetailing occurs more frequently than planned and will probably continue to do so since it does not involve expense or competitive disadvantage to employers. It occurs when an individual, laid off by a seasonal shutdown, seeks and finds another job which lasts until the resumption of his regular work. Although no comprehensive statistical study of this type of dovetailing has yet been made, spot studies in particular areas indicate the probability of conditions for the nation at large.<sup>9</sup> The most important fact is that, of total time spent employed in all industries except agriculture, between 3½ and 4 per cent is spent in dovetailing occupations. This is small and not of major significance in the employment pattern of the nation. But presumably all unemployed persons at any given time would be employed if they could find a dovetailing job. That they can't is attributable to a number of causes, for which there is some but no complete correction.

1. Lack of transferability of skill. To take an extreme case, a lumberjack laid off during midsummer because of the forest-fire hazard is seldom able to secure temporary employment as a cook in a summer-resort hotel. Most cases are not as obvious as this but are just as real. Skills are not interchangeable to any great extent, and the possessors of different skills are in noncompeting groups in the labor market. Vocational training, by providing individuals with more than one skill, can ameliorate this difficulty to some extent, but the possibilities are limited.

2. Difficulty of locating the dovetailing job. Since different kinds of work tend to be done in different areas, the worker who is seasonally laid off cannot turn at once to another job. Even if he knew where to go, it might require travel of some distance. If

<sup>9</sup> A study which I made and which was published under the title *Seasonal Unemployment in the State of Washington*, 1936, reached conclusions that are borne out by studies in other parts of the country. I lean heavily on my own work in the present discussion.

the distance is great, he cannot afford to move in order to secure temporary work. If the distance is short, he must still learn of the job. A nationwide system of public employment offices, as described in the preceding section, greatly facilitates this. The Employment Service can engage in a sort of planning for which there is every expectation of greater effectiveness than can be accomplished by planning on the part of employers.

In conclusion, it should be pointed out once more that the overwhelming majority of seasonal layoffs occurs during mid-winter and that dovetailing in such cases is obviously impossible. Neither vocational training nor employment offices can create jobs where none exist. It appears quite unlikely, therefore, that dovetailing will offer substantial alleviation to the problem of seasonal unemployment.

### PERSONNEL POLICY

In the overwhelming majority of business concerns, the rate of labor turnover, and therefore the amount of turnover unemployment, could be reduced by alterations in the firm's personnel policy. Personal irritations and annoyances in the plant may cause a number of employees to be constantly on the watch for another job and may cause them to quit in a moment of anger. When they leave, others may be hired, but soon these, too, begin to think of moving elsewhere. It is of course impossible to determine precisely how much of the total volume of turnover unemployment is caused by this sort of thing, but there can be no doubt that it is considerable.

The fundamental cure for excessive turnover is a reformation of the employer's attitude. If his position toward his employees is expressed by such phrases as "you do what you're paid for and shut up," if he thinks of his employees as "hands" or "units," then he must expect a high turnover. Workers, after all, are people. They want to work for an employer who is fair and above-board and who gives them credit for having human weaknesses as well as strengths. The most frequent reason for the neglect of this apparently obvious fact has been management's failure to develop its personnel division adequately. In too many corpora-

tions, the personnel and labor-relations officials have been junior subordinates, inadequately housed, staffed, and paid. Too many corporations have spent millions for inefficiency and even strikes in order to save thousands for personnel administration.

A change in general attitude must usually be manifested by tangible reforms. It would not be desirable to discuss such reforms exhaustively here; a few illustrations will suffice to demonstrate the proposition.

### 1. *The Exit Interview*

When a worker quits, he should be interviewed just before his departure by a responsible official of the firm, someone with authority to put him back on the pay roll if, in his judgment, this should be done and if the quitting employee changes his mind and expresses a willingness to return. Out of such interviews, the management can learn a great deal about conditions in the plant, needed corrections, and ways in which to improve labor relations. If there is a union in the plant, the union should be invited to participate so as to allay any suspicions of "secret dealing."

### 2. *Vacations and Sick Leave*

Since much turnover and casual unemployment is a consequence of temporary periods away from the job, resulting either from illness or the desire for a vacation, employers can greatly reduce the volume of the resulting turnover by installing regular systems for paid vacations and paid sick leave. The value of such systems in retaining officials and the "front-office" staff has long been recognized. In most instances, the same value is found in applying these systems to shop workers and others usually classified as "labor." Some of the details of such systems will be mentioned later in this volume and are here introduced simply because of their importance in reducing transitional unemployment.

### 3. *Complaints*

It seems to be human to complain—to grumble in a half-serious vein about the daily routine. The more these complaints are stifled, the more serious they become. It is good psychology to

let people complain and better psychology to provide someone with a sympathetic ear to listen to the complaints. In the vernacular of labor relations, most of the complaints are "bum beefs," that is to say, are either invalid or trifling. But scattered among the "bum beefs" are good ones, valid and substantial complaints which require attention. Even the invalid complaints, however, may become serious if they become sufficiently numerous and go unheard. Union contracts normally provide for a grievance procedure, under which complaints can be heard and dealt with. But in nonunion plants it is often impossible for the complaining worker to be heard. Wise employers designate some sort of grievance machinery, even in nonunion shops, both to make adjustments when complaints are valid and to permit "letting off steam" where invalid or not serious. Such devices, often called "wailing walls" or "crying towels," are of more fundamental importance than might at first appear. In providing for better labor relations in the plant, they can greatly reduce the turnover rate and incidentally the volume of transitional unemployment.

### THE GUARANTEED ANNUAL WAGE

Transitional unemployment is especially characteristic of work that is contracted on an hourly basis. Many managerial and professional employees enjoy the stability of an annual salary or at least of a monthly salary with a strong presumption of continuous employment. Many shop workers, even, actually do work steadily, the year around, but with no guarantee that this fortunate circumstance will continue. Since workers must eat and pay rent the year around, some assurance of continuity of employment—of economic security—is greatly desired by them. It is also desired by the employer, who finds considerable cost in a high turnover and in the necessity of training new employees. For these reasons a few companies that operate fairly steadily throughout the year have been able to guarantee workers a minimum annual wage.<sup>10</sup> It is not identical to an annual salary; it

<sup>10</sup> For the best annotated references on the early history of this plan, see Juliet Vradenburg, *The Guaranteed Annual Wage*.

normally guarantees a minimum number of hours of employment at straight-time pay. If more hours are actually worked, the employee receives the additional wages. But it does assure him a minimum income. It also obliges the employer to make every effort to arrange operations so that the work will be continuous. Otherwise he may be required to pay wages to people who are not producing. The employer also benefits from knowing in advance what his minimum wage bill is to be so that his operating plans can be made accordingly.

Late in the Second World War Philip Murray, President of the CIO, undertook leadership of a campaign to extend the idea to the steel and other industries. A governmental commission made a study of the plan, reporting fully on its desirable features but pointing out that it should not be arbitrarily imposed upon any industry that was unwilling to attempt to work it out.

It is unquestionably a desirable goal toward which industry and labor should look. For the present it would involve major changes in the organization of many industries, sufficient in some instances to bring about their bankruptcy. Clearly it would not be sound governmental policy to bring this about by Federal edict. That it can be achieved by industrial evolution, shaped under the pressures of collective bargaining, is possible. Certainly, a steadily increasing number of industries can develop a workable annual wage plan, and the accumulation of experience will show others the way. Highly seasonal industries can probably never guarantee a full year's work, but even if they could assure only a regular portion of a year, planned dovetailing would have some chance of success. Between the two, it is potentially possible to eliminate most of the undesirable features of transitional unemployment.

### UNEMPLOYMENT COMPENSATION

After all the schemes described in the preceding pages are under way, there still remains a large body of transitionally unemployed. If the unemployed individuals can maintain their health, strength, skill, and morale, they have a good chance of finding work again, sooner or later. Further, if they retain some

measure of spending power and are not forced to become public wards, they continue as effective parts of the market for consumers' goods; business is not forced so rapidly into economic depression; and job prospects continue bright. On the other hand, if they rapidly become indigent, they tend to constitute a downward drag on industrial prosperity and at the same time to become unemployable. A man who suffers extended unemployment faces a gradual disintegration, both in substance and in spirit. He exhausts his savings and pawns his possessions. His health may fail because of lack of adequate diet and medical attention. He falls in disrepute with the neighbors and the community and runs charge accounts which he cannot pay. He may leave his family in order to look for work and, despairing, never return. He may resort to begging, to petty pilfering, or to crime. His sense of justice and decency becomes distorted. His pride in skill disappears as soon as he realizes that the skill itself is gone. Unless something happens to restore his self-respect, he is in grave danger of becoming permanently unemployable.<sup>11</sup>

When unemployment becomes widespread, the reduction in workers' earnings is immediately reflected in a reduction in the national income. Industries find their markets restricted and curtail their activities, first in the production of consumers' goods and eventually in the production of producers' goods. In this way unemployment spreads like a contagious disease, with serious consequences to the entire economy.

In order to provide a living income to those who are temporarily unemployed and so prevent the worst features of the sequence of events described above, a system of unemployment compensation has been in operation in the United States since 1935. Because practical considerations of finance have required that the payment of benefits be limited to comparatively short periods of time (usually no more than half a year), unemployment compensation cannot adequately cover the impact of cyclical or other types of long-term unemployment, such as are described in the next chapter. Rather is it best considered as a

<sup>11</sup> For an excellent portrayal of the effects of unemployment, see E. Wight Bakke, *The Unemployed Worker and Citizens without Work*.

treatment for transitional unemployment. In this capacity it serves a number of functions.

1. In the immediate and individual instance, unemployment compensation prevents destitution after the wages cease. It doesn't provide a full living income but enables a person to "get by" for a short while. Its basic purpose is to put beans on the plate that might otherwise be empty. To this extent it is an organized form of relief, in which part of the sums paid to the worker were contributed by him during his more prosperous months.

2. This is justified, first on simple grounds of human decency and secondly on the ground that society must protect itself from the effects upon it of a demoralized man. Large groups of people may refuse to starve peacefully and quietly. Presumably any government must assume the right to protect itself, and any government faces danger when its citizens are hungry. The danger ranges all the way from petty crime to revolution, from local epidemics of disease to a generation of undernourished children.

3. The economic society must be interested in preventing the transformation of transitional unemployment into structural unemployment. Indigent unemployed are not effective purchasers in the commodity markets, and an increase in their number tends to depress the rate of production and hasten the economy into the downward swing of a business cycle. Thus, although unemployment insurance is primarily effective in providing for the temporarily unemployed, it is probably of real value in reducing the threat of permanent, or "hard-core," unemployment.

4. A national system of unemployment compensation is basically necessary to the effective operation of the United States Employment Service and the affiliated state Services. These Services can function only in so far as they know the identity and whereabouts of unfilled jobs and of jobless men. To receive unemployment compensation, a worker, upon leaving his job, is obliged to report that fact immediately. The Service is therefore notified at once. The accumulation of the facts surrounding thousands or millions of such job separations provides the information upon which the Service can operate.

5. The program of "experience rating" referred to earlier in this chapter is designed to stabilize industrial operations and so reduce the volume of casual and seasonal unemployment. Although this program thus far has been of doubtful value, it is yet possible that the method could be improved and so become effective. If nothing else can be said for it, "experience rating" has focused the attention of employers upon these types of unemployment and has stimulated efforts to minimize them. At any rate, it cannot exist unless there is a compulsory system of government unemployment compensation.

6. The nationwide system of unemployment compensation established by the Social Security Act of 1935 has required the continuing collection of pertinent data on unemployment and employment. Prior to 1935, information on the subject was sketchy and hopelessly inadequate for purposes of determining national or local policy. The vast files, records, and studies of the Social Security Board now constitute a source of reliable data upon which programs of unemployment reduction can be built.

A detailed study of unemployment-compensation systems is not suited to the purposes of this volume and will therefore be omitted here.<sup>12</sup> A few brief comments and conclusions must suffice.

Before the Social Security Act became law in the United States, the main reliance in caring for the unemployed was placed upon private and public charity. Private charity, in times of acute economic distress, was seldom able to go beyond the provision of so-called "bread lines." That is to say, a minimum of subsistence was doled out to hungry men. Normally there is no bread at the end of a "bread line"; after several hours of waiting, the typical serving is a few cents' worth of watery soup. Possibly better than any other incident in the progress of the business cycle, the bread line symbolizes the seriousness of the periodic breakdowns in our economy. Senator Robert F. Wagner, sponsor of the Social Security bill in Congress, said that "insurance is the

<sup>12</sup> Many universities offer whole courses on Social Security, and there are a number of detailed treatises on the subject. For example, the student can find an excellent account in H. A. Millis and R. E. Montgomery, *Labor's Risks and Social Insurance*.



way of order, the breadline is the culmination of chaos." It was not that private philanthropy had broken down; never in recorded history had it been adequate.

Public philanthropy, which has always provided more funds than private charity at its most generous, reaches the unemployed through the channels of state and county relief agencies. Prior to the Social Security Act, these agencies, on the average, seemed to be committed to the goal of enabling drab and dismal lives to be lived through a drab and dismal old age. It guaranteed the perpetuation of poverty and really could accomplish little more.

Although a number of experiments were made, unemployment insurance handled by employers, trade unions, and private insurance companies was not feasible. True insurance depends upon the presence of two fundamental characteristics: a broad spreading of the risk and sufficient experience to permit of predictability. Neither of these was available to private concerns. Only the Federal government, through a nationwide compulsory plan, could achieve the broad base necessary and could gather the experience tables which will eventually make possible the correct adjustment of premium to benefit.

Several large groups of workers are conspicuously omitted from the coverage of the existing unemployment compensation system in the United States: agricultural employees, domestic servants, and the employees of public and nonprofit institutions. When the Social Security Act was adopted in 1935, these (and other) groups were omitted chiefly because it was not then known how best to include them. Agricultural workers included two types which were especially difficult to provide for. One was the migratory, seasonal type, often possessed of no permanent residence or mail address. The drafting committee agreed that it was impractical to cover them with the Act until more precise knowledge about them could be assembled. The other difficult type was represented by the "hired man," who receives a large part of his "wage" in the form of subsistence. This fact presented unusual problems in the collection of a pay-roll tax. Domestic servants were excluded for essentially the same reasons as the "hired men." Employees of public and nonprofit institutions

were excluded largely because of the belief that most of them were already covered by existing retirement systems. In the original act, merchant seamen were also excluded, but they have subsequently been brought under the Act. The intent was that all these groups be brought under coverage as the accumulation of information permitted. Since 1935 the Social Security Board (responsible for the administration of the Act) has developed workable plans for the extension of coverage to the excluded groups, but political pressures have interfered with Congressional action. A farm bloc, representing interests desirous of avoiding the payment of a pay-roll tax, has effectively prevented the extension of the Act, which had been contemplated by the authors of the original bill.

Extension of the Act to the presently uncovered groups is desirable for reasons in addition to the obvious reason that these people need protection as much as anyone else. First, individuals are apt to shift back and forth between covered and uncovered occupations. This leaves the board's records incomplete and thereby hinders the urgently necessary accumulation of complete data. Secondly, it undermines the basic principle upon which a successful plan of unemployment compensation must be founded—that benefits are a right to which all unemployed persons are entitled rather than an act of charity which is a somewhat unwilling gift to unfortunate indigents. If the Act is subsequently extended to almost complete coverage of all workers, there is every reason to expect that it will furnish a substantial alleviation of transitional unemployment, together with much of the knowledge which is so badly needed if all types of unemployment are to be reduced. The supplementary Maximum Employment Act of 1946, pathetically weak though it may be, may yet prove to be the first step toward the effective utilization of that knowledge.

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## *Chapter 4*

### *STRUCTURAL UNEMPLOYMENT*

#### NATURE OF STRUCTURAL UNEMPLOYMENT

Transitional unemployment, discussed in the previous chapter, is essentially personal in the sense that it arises directly out of the relationship between the employee and the employer and is not the product of changes in the structure of the national economy. These changes, which are continually taking place, are responsible for the several varieties of "structural unemployment" which arise out of defects in the structure of the economy. In this category unemployment is likely to be of longer duration or, especially in the cases of older workers, permanent. While much of the transitional unemployment seems unavoidable (some turnover unemployment is even desirable), structural unemployment could, at least theoretically, be abolished. Its abolition, however, would demand either that the economy become wholly static (that no structural changes take place) or that the changes be so carefully planned that unemployment would not result. In all likelihood a static economy would be neither desirable nor possible. A thoroughly planned economy also runs into immediate conflict with the traditional principles of American democracy. A nice balance between planning and democracy is not impossible, but the route to that goal has many pitfalls and should be trod with infinite care, patience, and experimentation.

## CYCLICAL UNEMPLOYMENT

Modern economic history is characterized by a continuing sequence of alternating prosperity and depression. Although the undulating rise and fall of business activity do not constitute a cycle since the curve never returns to its point of origin, the phenomenon is traditionally called the "business cycle"; and the unemployment that is characteristic of the depression periods is called "cyclical unemployment."

The most conspicuous features of the business cycle follow each other in fairly regular sequence. After the lowest point of the depression has been passed and formerly unemployed men are going to work once more, the volume of spending for consumers' goods begins to increase. This yields slowly increasing profits for retailers, wholesalers, and eventually manufacturers. The renewal of prosperity is accompanied by increased savings which are invested and which stimulate the reopening of closed stores and factories and the construction of new ones. This creates a new demand for producers' goods. Meanwhile there are still more workers on the job, and many of them, in addition to being consumers, are able to save part of their earnings. These savings, like those of financial groups, become available for the expansion of plant and equipment, and a growing portion of the national expenditure is shifted from consumers' goods to capital goods. The peak of prosperity is reached when the volume of production substantially exceeds the volume of goods which consumer expenditure can buy. At that point there are apt to be nearly full employment, substantial savings invested in industry, high speculative profits, and general optimism. But unsold inventories begin to accumulate, and a few industries begin to curtail their activity. At this point the stock market is apt to get panicky. Operational curtailments are accompanied by reductions in the working force, and the nation's wage bill decreases. Many individual savings are wiped out by business failures or stock-market crashes. In the struggle to survive, many employers make wage cuts; others lay off large numbers of their employees. The inevitable result is a cut in consumer purchasing power,

which in turn decreases the market for goods. Collapsing markets cause unemployment; unemployment causes more markets to collapse. The purchase of consumers' goods declines, but not so fast as the decline in the purchase of producers' goods. This downward whirl continues until strong governmental action or international cataclysms halt it or until bankruptcy has become so prevalent that the remaining purchasing power, small though it may be, is still vastly greater than the effective productive capacity. At this point bad leadership or bad luck could possibly bring about the collapse of the government itself. It may lead desperate government leaders to turn to militarism and eventual war as a means of stimulating business prosperity.

During the downward curve of the business cycle unemployment tends to increase at a progressively rapid rate. Those laid off from their jobs find it increasingly difficult to find other work. According to the National Industrial Conference Board, the unemployed constituted less than 1 per cent of the total labor force in 1929. By March of 1933 the percentage had jumped to nearly 30. And not until 1941 (the year of the outbreak of the war with Japan) did it drop below 16. The great bulk of this unemployment was cyclical in nature and was the accompaniment of the great depression which spanned the years from 1929 to 1940. The figures give some idea of the tremendous magnitude of the problem of cyclical unemployment. Indeed, it has been estimated that the business cycle is responsible for at least two-fifths of all unemployment.<sup>1</sup> But even this quantitative measure, large though it is, is not the full measure of the gravity of cyclical unemployment since a long period of time without a job has much more serious consequences to the worker and his family than a group of short periods.

In recent years economists have been making an intensive study of the composition of the national income. If this study results in the realization of methods for the guidance of spending and discovers correctives for a dynamic economy which will assure a continually correct balance between consumers' and capital goods, it will be as epoch-making in economics as the

<sup>1</sup> Paul Douglas and Aaron Director, *The Problem of Unemployment*, p. 32.

atomic bomb was to warfare. That day has not yet come, however, and it appears probable that there will be some years to wait. Even after the theory becomes perfected, the acquisition of precise data will be a serious problem, and the use of adequate guidance without excessive coercion may prove to be impossible.<sup>2</sup> The procedures that are now available to alleviate cyclical unemployment will be discussed later in this chapter.

### TECHNOLOGICAL UNEMPLOYMENT: MECHANICAL

Technological unemployment results from the introduction of labor-saving devices, that is, from the displacement of workers by mechanical improvements or by increases in managerial efficiency. Attention will first be given to the unemployment resulting from improvements in mechanical techniques.

For centuries wheat was cut by hand with sickles or scythes; it was shocked with pitchforks and threshed with flails. Only the development of reaping and threshing machines, drawn by horses, made it possible for wheat production to expand to the great extent which it reached during the later nineteenth century in the Great Plains of the United States. Then, for many years the wheat harvest employed large numbers of men. But suddenly the great "combine" was invented, and a majority of the men were permanently displaced by the machine.

Prior to 1905, glass bottles and jars were blown either by human blowers or by relatively primitive machines. Then the Owens Bottle Machine was invented—a machine so nearly automatic that it did not require skilled operators. In 12 years, the number of hand blowers in the United States declined from 9,000 to 2,000. And, in spite of the fact that the output of glass bottles increased by one-half, the number of men required to operate the machines increased by only 2,000. Thus, by 1917, 4,000 workers were producing half again as many bottles as 9,000 workers had produced in 1905. The other 5,000 workers were technologically unemployed and unless they found work in another craft, were permanently unemployed.

<sup>2</sup> Interested students are referred to E. F. M. Durbin, *Purchasing Power and Trade Depressions*.



Until the invention of the cigar-making machine in 1917, all cigars were made by hand, work requiring a high degree of specialized skill. The invention, however, was adopted by the larger manufacturers as fast as the machines could be produced, and the industry was revolutionized. Although the handmade cigar has not disappeared, it now represents less than 20 per cent of the total cigar production, and the percentage gets smaller every year. The few remaining cigar makers are employed in the scattered "buckeyes" (hand shops), most of which are located on Manhattan Island and in Florida. The old cigar makers developed much pride of craftsmanship, and their resentment of the machine made it difficult, if not impossible, to accept the technological change, and many of them suffered from years of underemployment or unemployment.

The economy of the American South is dependent upon the production of cotton. Prior to the Emancipation Proclamation, the cotton was picked by slave labor; since then it has been picked by wage earners, sharecroppers and share tenants. The picking has furnished the principal economic income of a large part of the Southern population. A mechanical cotton picker, pulled by a high-wheeled tractor, has now been invented. The machine, when put into general use, can displace nearly all hand-picking. The smallness of the individual tract, coupled with the cheapness of labor, has retarded the adoption of the machine. But the time must come when the cost of labor rises, the small operations will be combined, and the mechanical picker will eliminate the need for hundreds of thousands of human cotton pickers. The event, which is already impending, heralds an economic revolution in the South, and a feature of that revolution will be the technological unemployment of a large portion of the population.

These are only a few illustrations; countless others could be given. From the illustrations it can easily be concluded that exact statistics of technological unemployment for the entire nation are not possible to gather. But that it exists and that it accounts for as much as 4 per cent of the average volume of unemployment is well established. It must be admitted that there persists a small group, composed apparently of persons who have studied

very little about the subject, who for some reason insist that there is no such thing as technological unemployment. Their line of reasoning is first that a labor-saving machine must be built. Therefore, the displaced workers can find employment in making the machines. Second, that the machines so increase the market for the product (by reducing its price) that, in the long run, more workers are employed in the industry than were employed before the introduction of the machine. The usual illustration is that of the linotype machine. Before 1887, all type was set by hand. The new machine could do the work formerly done by four men, and it was introduced very rapidly during the next few years. For the time being, there was great unemployment among typesetters. But the machine made possible the great expansion of daily newspapers, and the growth of the printing business was enormous. Since most of the advertising copy was still set by hand and since the expansion of newspaper circulation increased the volume of advertising, it was only a decade before there were actually more hand compositors employed than before the linotype was invented, to say nothing of the machine builders and the machine operators. Therefore, it is argued, the machine stimulated employment in the trade, and technological unemployment did not exist.

The historical account is correct, but it does not prove the non-existence of technological unemployment. The International Typographical Union, by a farsighted policy, insisted that linotype operators be selected from among the hand compositors, thus retaining at least one in four at the job. But what of the others? Few, if any, were able to transfer their skill and to secure work building linotype machines. That work was done by other persons. No doubt unemployment among machinists was reduced as unemployment among compositors was increased. But the fact that these two groups offset each other in a national average put no beans on the plate of the unemployed compositor. It is also true that in a decade the volume of printing had required the employment of more compositors than ever before, but some of the workers had been unemployed for nearly ten years before that occurred. It is small comfort to a man whose wife and children are hungry to tell him that he shouldn't worry

—in ten years he can work again! By that time he might well have died of starvation. Perhaps, in the long run, technological unemployment does not exist. But human beings live in the short run, and in the short run it is a very real fact.

### TECHNOLOGICAL UNEMPLOYMENT: MANAGERIAL

Improvements in the efficiency of organization may displace labor just as extensively as the introduction of labor-saving machines. The typical factory of a hundred years ago was quite haphazard in its layout, its management having no concept of production control. No thought was given to ventilation, light or noise reduction. Workers were driven chiefly by the fear of dismissal and starvation. In comparison with a modern plant individual worker production was low, which is another way of saying that it required more workers to produce the same volume of output. A large part of the increase in worker efficiency, and hence of the technological unemployment, must be attributed to improvements in mechanical technology, as described in the previous section. Another large part, however, is attributable primarily to genuine improvements in managerial efficiency. The greatest development of the latter originated with the monumental discoveries of Frederick W. Taylor, whose work in this regard began in the 1880's and, in spite of his death in 1915, still goes on. Taylor, as a foreman in a steel plant, observed the prevalence of wasteful procedures. He studied, wrote, lectured and attracted attention. Although he contributed a number of mechanical labor-saving devices, his great inventions were in the field of managerial organization and plant layout. He put into practical application the development of Adam Smith's concept of the division of labor, showing the material advantage of a high degree of specialization on the part of each worker and eliminating an amazing number of waste motions. His followers who might more aptly be called his disciples, often carried his principles to inhuman extremes, expecting the same routine efficiency from a man as from a machine. Human beings, after all, cannot be effectively reduced to the simplest repetitive motions, and the attempt by efficiency experts to do so aroused

the bitter antagonism of the labor movement. The return swing of the pendulum brought more intelligent counsel, but the great and valuable contributions of Taylor remained.

Improved managerial efficiency, great as its value is, inevitably brings a reduction in the working force necessary to produce a given quantity of output. This is also the case with the managerial improvements incidental to the merger of small firms into a big firm. In such a case, improved efficiency may result, but at the expense of a reduction in the number of employed, chiefly in the white-collar class. Imagine two manufacturing plants selling their product in the same geographical area. Merger of the two firms will eliminate competition, and thereafter one salesman can handle the territory formerly covered by two. The office force will need to be larger than that of either separate plant before the merger, but not so large as both combined. Probably the operation of each factory will proceed as before so that no reduction in the total number of shop workers would take place. But the office workers and salesmen will witness a decline in the number of jobs available. This illustrates another (but similar) way in which improved managerial efficiency can produce a form of technological unemployment.

In all its various forms, technological unemployment seems to be an inevitable price of progress. Proposals have been made that an "inventor's holiday" be declared—that labor-saving inventions be prohibited for a stated period of years. Perhaps the asininity of such a proposal is apparent. During the nineteenth century in Russia, irrigation water was pumped from the rivers by men walking on treadmills. The czar sought to preserve the jobs of these men by prohibiting the importation of power pumps into the empire. The end of such a shortsighted policy, extended into all forms of activity, was the economic stagnation which set the stage for the Russian Revolution and brought the end of the czars. The efforts of human ingenuity neither can nor should be curtailed. Technical progress must be made, and other ways must be found to care for the problems of technological unemployment.

## INDUSTRIAL SHIFTS

Whole industries sometimes shrink in size or disappear entirely, causing severe unemployment among the workers attached to that industry. In England, prior to about 1840, agriculture was the dominant economic employer. The shift to an industrialized England, dependent upon colonies and dominions for agricultural produce, resulted in a permanent decrease in the number of farm workers. Both there and in the United States, coal mining has been over the years an industry of declining relative importance. The development of oil and electricity as sources of heat and power, coupled with the near exhaustion of the more easily mined coal deposits, provides a continuing threat to the dominance of the coal-mining industry. The Second World War brought a temporary rejuvenation of what had been called "a sick industry," but in the long run the sickness of declining years must come upon it again. And with the decline will come unemployment. Coal miners do not shift easily to other occupations, especially if they do not realize that their jobs are gone permanently. It is natural for them to remain unemployed, hoping to find work at their own trade, until stark necessity forces them into work of less skill and lower pay or onto the permanent relief rolls or until old age or illness removes them from the labor market entirely. Coal may be on the way down; other industries have disappeared completely. Something is left of the buggy-whip industry, but not much. The hair-net industry suffered a serious decline during the fashion for short, bobbed hair among women. No doubt the employees of these industries, if they were young enough, found other employment in the course of time. But temporarily, at least, the decline brought unemployment.

Industrial shifts sometimes occur more suddenly. During the Second World War, for example, the government adopted a policy of reserving raw materials for essential industries, thereby curtailing or shutting down those industries which were not important to the war program. For example, the need for silk for parachutes led the government to stop the consumption of silk by the hosiery industry, closing down the latter overnight.

This happened to dozens of industries and brought about what was known as "priorities unemployment." Fundamentally, of course, the result is identical with that of the natural decay of an industry, the only difference being in the time involved. Unemployment results from the shift in emphasis from one industry to another. Priorities unemployment brought only temporary suffering since a national labor shortage made it easily possible for the displaced workers to transfer to other jobs. Even so, the transfer frequently required the acquisition of new skills or a move of residence from one place to another so that the unemployment, although usually of brief duration, was very real.

### INCIDENTAL UNEMPLOYMENT

As an incidental consequence of flaws in labor-management relations, short-term unemployment may often occur. A stoppage of work by one group of workers within a plant may prevent other employees from working. Properly speaking, those employees not working in a strike-bound plant are not classified as "unemployed," but they are nevertheless deprived of income from wages during the time of the strike. More clearly unemployed are the workers in allied industries who are laid off because of the shutdown of the plant in which the dispute occurs. For example, a prolonged strike of steel workers may cause the temporary unemployment of many employees in industries in which steel is a basic raw material. A longshore strike on the waterfront may cause widespread layoffs in a multitude of industries.

Again, in times of declining business prosperity, an unsuccessful strike (or a successful lockout) may result in unemployment. This would differ from cyclical unemployment only in that a breakdown in employer-employee relations is the direct cause and normally results from the fact that the plant may resume operations with a smaller pay roll than before the dispute.

Severe maladjustments in wage rates may cause unemployment. Abnormal and unusual increases in one industry may attract large numbers of workers to jobs that are impermanent or

## REDUCING STRUCTURAL UNEMPLOYMENT

Unemployment that results from structural features of the national economy cannot be eliminated without changing those structural features. The more fundamental changes sometimes advocated are revolutionary in nature and involve the substitution of a completely new sort of economic system. Whether the price paid for such a transformation of society is or is not greater than the gain to be derived is a question beyond the scope of this book. We are here concerned only with the advantages of such a change in terms of the elimination of structural unemployment, and, at the present time, there is no assurance that the price paid would be rewarded by the deed accomplished. Fortunately, for the peace of conservative minds, not all changes in economic structure need be revolutionary. There are certain economic adjustments which, if they will not eliminate structural unemployment, can at least reduce it to a very low level. The accomplishment of these adjustments will require the accumulation of a great deal more information than is now available and the development of both ideas and techniques far beyond the present capacity of economic theory. That it is not impossible, however, is attested by the fact that some of the routes to be followed are already known, and by the experience gained from starts which have already been made along those routes. The Maximum Employment Act of 1946, inadequate though it is, starts the machinery in motion whereby the necessary knowledge and techniques may eventually be gained. Under it, a Board of Economic Advisers to the President of the United States assembles information relevant to the problems of cyclical employment. This Board has the duty of proposing ways and means whereby anticipated unemployment can be avoided. The presumption is that the President and Congress, if shown the way, can and will proceed to enact and enforce policies that will result in a minimization of unemployment. To be effective, this will require a peacetime plan and action as vigorous as that undertaken during the Second World War. Since such a program invariably runs counter to the interests of special but powerful

groups, it can hardly be expected that the immediate results will be brilliantly effective. Nevertheless it is a start, and with careful guidance the long road ahead might be traversed safely and comfortably to the desired destination.

### PUBLIC-WORKS PROGRAMS

The government of the United States has always engaged, and probably always will, in a multitude of activities requiring the employment of many persons. It undertakes a great variety of enterprises which utilize the labor of workers of almost every skill. In addition to its own activities it contracts out to private business firms a supplementary multitude of industrial operations. Many of these are of a continuous nature, such as the transportation of the mail and the dredging of silt from established river channels. Others are essentially sporadic, like the construction of public buildings and giant dams. During periods of business prosperity when the tax revenues of the government are high although tax rates are low, Congressmen are under political pressure to secure the expenditure of large sums of money on conspicuous public works in order to benefit their constituents. As a result there is pressure to increase the scale of public construction during periods of prosperity and to decrease it during depressions. Already, in the prosperous years, both employment and prices are high. Government projects undertaken at such times compete with private business for labor and, if public activities are sufficiently extensive, may even create a labor shortage. Then, when government projects are curtailed in years of depression, there will be a consequent increase in unemployment.

It would seem reasonable that governmental practice should be just the opposite: it should expand its construction during periods when the curve of business activity is declining and private business is unable to provide normal employment and curtail it in years when private business is prospering and there is no substantial volume of unemployment. It is easy to say that this should be done; but it would be very difficult to do it. Among the major difficulties are the following:



1. Many projects must be done at the time they are needed and cannot be deferred. There remain, however, many other things which can be done just as well one time as another and therefore could be held in abeyance until a business depression put in its appearance.

2. The business cycle revolves at an irregular speed. Although the typical cycle seems to span about eight years, it may be from five to twenty years between major economic depressions, and forecasting is never certain. Unless a government has adequate facilities and techniques for reasonably accurate prediction, it will present an instance of the blind leading the blind. It is the purpose of the Maximum Employment Act of 1946 to equip the President with the capacity for the needed prevision. Since it takes some time for the eyes of an infant to acquire the ability to see, too much must not be expected of the newly born Board of Economic Advisers.

3. "Long-range" planning probably requires a range of at least 20 years. Five Presidents of the United States could come and go in that interval, with no continuity in their policies and programs. Members of the House of Representatives (where all financial appropriations must originate) could be changed ten times. There is a probability discernible in these facts—the probability that plans originally laid for long-range action would be changed, revised, or discontinued long before their accomplishment. Apparently the only way of avoiding such a breakdown would lie in the creation of a long-term, nonpartisan planning agency having the power to carry through in detail the general plans adopted by Congress.

4. The scheme would involve the adoption of the concept that the Federal budget may properly be balanced over a cyclical term of years rather than annually. This would require the government to restrict its expenditures during years of prosperity and to increase its expenditures during the depression. In the event of major depression, government might go heavily into debt to be repaid during the subsequent upward boom. Although such a procedure could, if properly administered, be economically sound, it is quite probable that it would be politically difficult and would arouse widespread fears in the business world. Most

businessmen are forced by circumstances to think in terms of an annual budget, and the proposed long-range concept would appear to constitute a perpetually unbalanced budget. And they would be correct to the extent that no plan for the future can contemplate the results of unexpected political change or international conflict.

Great as these perplexities are, they are not insuperable. Under the pressure of a war emergency (and with the popular support engendered as patriotism), the government did plan in detail during the Second World War. The tremendous waste and inefficiency of that time might be ascribed to the speed and urgency of the program, and attention should be directed to the fact that all-pervading plans were actually carried through. The planning of long-range public works in peacetime involves planning on a very much smaller scale and under considerably more leisurely circumstances. There is no fundamental reason why it cannot be accomplished by a nation that prides itself upon its energy and intelligence. Its ability to accomplish it apparently depends upon a popular appreciation of the advantages to be derived from such planning. Among the advantages, the following are important and not difficult to understand:

1. Construction of public works during depressions rather than during prosperous years permits the public to take advantage of the lowest construction costs rather than pay the highest. This would provide a welcome relief to all taxpayers.

2. It would stimulate employment at a time when, otherwise, employment would be steadily decreasing. On the other side of the business cycle, it will avoid the creation of unnecessary labor shortages. The result would be a steadying of the employment rate throughout the years, which is another way of saying a reduction in the total volume of cyclical unemployment.

3. During depressions (because some depression could still exist), it would put money into the hands of those employed on the public works, thus providing consumer purchasing power at a time when it is most desperately needed.

4. Construction by a public agency involves the consequent purchase of raw materials, tools, equipment, and other supplies from private firms. A public-works program therefore stimulates

private industry and increases, or at least maintains, employment in the latter. A public or private investment, like a pebble dropped in a pool, spreads its influence in ever-widening circles. For example, assume that the Federal government undertakes construction of a post-office building. One of the least of many items to be required is a supply of work gloves, so the work-glove industry receives an order. This results in an order from the cotton-textile manufacturers, who in turn place orders for cotton with a broker, who passes on an order to the cotton farmer, who in turn may order commercial fertilizer or even a mechanical cotton picker, and so on. At each point there is an item of employment involved. As the circles widen they become smaller and less perceptible, but the influence nevertheless exists.

The planning of long-range public works does involve the making of certain minor changes in the structure of the public economy. The changes could be made gradually, however, so that serious dislocation of either groups or individuals need not ensue. It seems probable that unless some such changes are made the problem of cyclical unemployment will continue to increase in gravity unless the nation is forced into sudden, abrupt, and even revolutionary changes.

### FISCAL POLICY

The planning of long-range public works involves an even more complex problem of planning governmental fiscal policy, of which only a few highlights can be suggested here. The program outlined in the preceding paragraphs would necessitate a cyclical rather than an annual balancing of the Federal budget, a proposal which has been ably supported by many advocates but which has induced considerable technical controversy. The keystone of the doctrine that is usually advanced in its support is the contention that an augmented flow of government investment funds may replace, or substitute for, a diminished flow of investment funds on the part of private business. That is to say, if private employment decreases, the government may enlarge a program of spending on public works so as to absorb those workers who would otherwise be unemployed and at the same

time to stimulate private enterprise. Part of private business activity is financed with borrowed funds, and a suddenly expanded work program inaugurated by the government in a period of declining tax revenues would probably occur through increased borrowing rather than taxation by the Treasury. The increased public-works program not only provides employment in itself but provides additional employment in those private businesses which serve the public projects. Some industries use more materials and more labor than others. It would be advisable, therefore, for the government to direct its investment flows to those industries or projects which will provide the most employment.

The argument proceeds upon the assumption that the national income can be maintained only if the national expenditures for public works offset the deficiencies in private business investments and that the same beneficent results will obtain whether the national income arises out of the accretion of private investment flows or out of the substitution of governmental investments. This requires a long-term cyclical budget, which would be balanced in the period of prosperity through the amortization of the debt incurred during the recession and depression phases of the cycle.

Closely allied to the government loan policy is its tax policy. Although there are certain exceptions, the average worker earns less than the average employer. This means that the typical worker spends a larger percentage of his total income for necessities than does the typical employer. The surplus of the latter is normally invested, which is to say that it goes into the production of capital goods—the instruments of production. Therefore, wealth going into the hands of the large personal and corporate employers tends to go into further production; wealth diverted to the hands of the employee class tends to be used for current consumption. Unless the flow of investment continues at an increasing rate the flow into consumption will decrease, and there will be underutilization of capacity and the inevitable beginning of a recession in business activity. Government, through its power to tax and spend, can materially affect the level of industrial activity and hence of employment. By using a carefully

planned fiscal policy, including the appropriate management of debt, taxation, and expenditures, and by relating this fiscal policy to the needs of the economy in its cyclical trends, a government can modify the irregularities in national income and production and therefore has the potential power of greatly reducing cyclical unemployment. It is far from simple, but also far from impossible.

### RETARDING TECHNOLOGICAL ADVANCES

As was pointed out earlier in this chapter, an "inventor's holiday" is neither practical nor desirable; technological advances must continue to be made. However, there is no valid reason why every labor-saving device must be put into universal use the moment it is discovered. Rather, a lag in the introduction of such devices may actually be in the public interest. The musicians fought the development of "canned music"; the painters resisted the paint sprayer; and, within limits, both groups were correct. The new devices cannot be deferred permanently, just as the Russian czar could not prohibit the use of pumps. But if they can be introduced gradually instead of suddenly, they can bring their benefits without the accompanying tragedies.

The operating units of the American Telephone and Telegraph Company faced this problem when the automatic dial telephone was perfected. Had the company converted all its manual systems to automatic as rapidly as the machines could be manufactured, the sudden unemployment of telephone operators would probably have been very great. The changeover was made gradually, however, so that the technologically displaced were absorbed into other positions in the same company. Some were taken up by the expanding service of the telephone system; others took the places of those who normally retired or quit. As a result, comparatively few of the employees suffered from technological unemployment. It should be noted, however, that this procedure can be followed best by a large company. A small concern with a usually steady pay roll may foresee no expansion and no retirements or "quits" to absorb the technologically displaced.

The telephone management took advantage of a nearly ideal opportunity; but the nearly ideal does not occur often.

Frequently a management could accomplish something along this line but is not sufficiently farsighted to perceive the advantage of doing so. The prospect of an immediate saving through the adoption of a labor-saving machine is attractive and appears to warrant the prompt dismissal of the superseded employees. But the management of a firm owes certain obligations to employees and the public as well as to the stockholders, the bank, and the customers, and these obligations may acquire a cash value. To proceed with a policy of ruthless dismissal of technologically displaced workers may so injure the morale of the remaining workers that the company can actually lose rather than gain by the substitution. At the same time, the appearance of newly unemployed on the public-welfare rolls may result in an increase in the taxes paid by the company. For such reasons, a company may install labor-saving devices only as fast as it can absorb the displaced workers for other than strictly philanthropic reasons. It is often good business as well as good philanthropy to do so.

Where an industry is characterized by small concerns engaged in active competition, however, it is practically impossible to ensure that the installation of technical innovations will be gradual. In a number of such industries the same result has been achieved through action by labor unions. Action from that quarter is typically attacked by employers and the press on the ground that the unions are interfering with the prerogatives of management and the public welfare at the same time. Indeed, union restrictions upon technological advance have sometimes been unjustifiably severe or shortsighted. Where the union policy is not immoderate, however, it is as justifiable (and desirable) as the previously described procedure which was followed by the telephone company. This company has been widely praised and many unions have been widely condemned for the pursuance of identical policies.

It appears that little if anything could be done by the government to bring about an intelligent and equitable pace in the adoption of labor-saving machines, and since industry and labor

can regulate only a small fraction of it, a considerable volume of technological unemployment seems likely to persist. The small revision of the economic structure which is involved does not seem to be subject to widespread planning and presumably will continue in the haphazard manner which has characterized its past history. But every true gain in that direction is to be desired, and the advancement of knowledge may well result in some such gain.

### THE SEVERANCE WAGE

A substitute for the planned introduction of technological advances is the severance, or dismissal, wage. This is a plan whereby an employer pays a part or all of the regular wage to an employee laid off because of the substitution of a technological device, for a short period of time after his dismissal. The time usually runs from 2 weeks to a month. The theory is that the employer gains from the introduction of the new machine and shares this gain with the displaced employee, who is thus provided with income while he prepares himself for another sort of job.

As a means of providing income during the several weeks which elapse before the worker becomes eligible for public unemployment compensation, the scheme has something to commend it. However, it depends in some measure upon the benevolence or financial capacity of the employer; it raises difficult questions as to the eligibility of the individual worker when he is laid off; and it is highly uneven in its benefits to workers and in its penalties upon employers. It cannot therefore be looked upon as a program of major importance. The payment of half the regular straight-time weekly wage for a period of 2 weeks, as a preliminary supplement to unemployment compensation, is perhaps the most that can be really justified. If it runs longer than 2 weeks, it is attempting to serve the purpose that can more properly be served by an improved system of public unemployment compensation, and a wider use of the severance wage might actually hinder the improvement of the public system.

## THE REDUCTION OF WORKING HOURS

During the depression years of the thirties there was strong pressure, chiefly from among the leaders of labor unions, to assure more job opportunities through the shortening of the working day and week. The program so suggested differed from a "share-the-work" program in that it inevitably carried with it the corollary of an increase in the hourly rate of wages sufficient to assure a continuity in the amount of weekly earnings. For example, assume a job paying 90 cents an hour for a 48-hour week. The week's earnings (assuming the payment of full straight-time pay and no more) would be \$43.20. If the work week were shortened to 36 hours and the same weekly earnings were to be paid, the hourly rate would have to be increased to \$1.20. The proposition further assumes that additional workers will be employed to fill in the hours between 36 and 48. In the example, if there were 300 employees when the work week was 48 hours long, the reduction of the week to 36 hours would result in the employment of a total of 400 workers. Thus, the argument runs, the plan would result in a  $33\frac{1}{3}$  per cent increase in employment and no worker would be underemployed since each would be taking home the same earnings as before. In fairness to the union leaders who proposed this plan, it must be admitted that they seldom insisted upon an increase in the hourly wage rate to bring about a weekly wage which was fully equal to the earnings on the longer hours—they were willing to compromise. The extreme position is stated here so that its full consequences can be examined. A compromise agreement would merely bring about a modification of the results of examination.

Employers were quick to reply that the plan would make them pay the entire cost of unemployment. In the example, the employer would have a total weekly pay roll of \$12,960 during the 48-hour week, which would be raised by one-third to \$17,280 for the 36-hour week. The union spokesmen retorted that employers would be enabled to meet the higher wage bill because in the shorter week the productivity of each worker's labor would be increased. Few people took the trouble to give the obvious



reply: if total productivity in the 36-hour week actually did equal that of the 48-hour week, the additional hundred workers would not be employed, and there would be no reduction whatever in the volume of unemployment. And the whole plan was proposed as a means to reduce unemployment!

If the program were undertaken at a time when business was prospering and markets expanding, it is possible that the employer would increase the number of his employees and increase his total output. But at such a time unemployment isn't a critical problem. The plan at such a time would probably be desirable, but for different reasons than the ones advanced. If, on the other hand, it were undertaken during a period of depression when business is faced with contracting markets, there is no reason to expect that any employer would add the additional workers assumed by the plan.

Further, the plan would not work with the mathematical exactness inferred by the preceding illustration. Actually the whole idea is erroneously founded upon an exploded notion—the "lump-of-labor" theory. This theory, which evolved as a part of classical economic doctrine, held that there is a fixed demand for a product and a fixed amount of work to be done in creating that volume of product which is called forth by the demand. Actually, neither is fixed. At the time when employment is decreasing, demand is likely to be decreasing also, and by wholly unpredictable amounts. Further, since the productivity of labor is so highly complex and so variable, it can never be assumed that a fixed number of hours will produce a fixed volume of output. "Units of labor," when measured in terms of hours, are fantastically unrealistic.<sup>5</sup>

When the Fair Labor Standards Act was passed in 1938, one of the arguments offered to support its provision respecting hours was that it would provide employment. The Act was meritorious and has had beneficial results. However, it seems unlikely that an increase in employment was among the results. In prosperous times, or over a very long period of time, the shorten-

<sup>5</sup> For an explanation of the difficulties involved in measuring the productivity of labor, see pp. 97-100.

ing of the work week may stimulate employment. But it is not a plan to experiment with during the worst days of a business depression. There will follow, in Chap. 6, a more detailed discussion of the intricate relations between hours and wages, revealing more fully the need for caution in experimenting with broad, nationwide regulations of hours, regardless of industry or job.

### FEATHERBEDDING

A number of labor unions have succeeded in establishing effective rules which limit the amount or kind of work which a member may perform without, of course, limiting his wages. This practice is called by a variety of names, the most commonly used being "featherbedding." In a substantial number of instances the rules are genuinely designed to increase safety on the job or to render a job less onerous. However, there are other instances in which the avowed purpose is the creation of jobs—the reduction of the volume of unemployment in the particular craft. In many respects the device suffers from the same defects as the proposal for a general shortening of the work week. And yet it has more to commend it in that it applies to a particular craft or industry where there is a better chance of its success than when applied broadly to all industry as is implied in the proposal for a universal limitation of working hours. In the former instance, the employer might frequently (but not always) pass the increased labor cost on to the consumer in the form of slightly higher prices, or he may be able to absorb it out of profits or greater volume. In such cases the union concerned could actually increase the employment of its members without causing injury to the employer. In those cases where the employer can neither absorb nor pass on the increased burden he may be forced into shutting down his plant, causing more rather than less unemployment. Union leaders should be very sure of the probable consequences before pressing for featherbedding rules. On the other hand, however, these rules are not invariably deserving of universal condemnation such as they have sometimes received and which is implied in the title given them. They are sometimes not only harmless but beneficial.

It must not be inferred from the above that there are no featherbedding rules which are wholly unjustified. Arbitrary provisions requiring the duplication of effort or the payment of wages to persons who do no work at all cannot be adjudged economically sound. Such rules are more properly described as "racketeering." However, they are not common, existing only in a very few trades, and they are confused in the public mind with justifiable rules branded with the same derogatory label.

At best, even the justifiable featherbedding rules are a temporary palliative for a structural defect. Unions may justifiably use them for increasing safety and may sometimes be warranted in using them to spread employment among their members. But in either case they can be no more than a small part of a larger program aimed at the permanent control of structural unemployment.

### VOCATIONAL TRAINING

Technological unemployment involves the displacement of workers from their accustomed craft. Temporarily at least, it diminishes, or even eliminates, the number of available jobs for practitioners of that craft. The technologically unemployed must then seek jobs in unskilled crafts or else acquire new skills. It is to enable them to accomplish the latter that vocational-training programs have been established. These programs do not constitute a real change in the economic structure and, fundamentally, are temporary palliatives themselves. In the short run they may be very useful palliatives, but unless great foresight is used, they may occasionally do more harm than good. Vocational training is not adequate education since its product is normally useful for one purpose only—the performance of a job. If at the completion of the training there is no job, the whole process has been wasted. Even worse, the trained worker tends to remain unemployed while waiting for a skilled job longer than he would otherwise have done. Eventually he may be forced to accept an unskilled job, and his reaction is apt to be disillusionment and bitterness. In so far as the directors of vocational-training schools can foresee the areas in which there will be a demand for a particular skill and can estimate in advance the number of workers

possessing that skill which will be in demand, the program is a highly desirable one. But, since such foresight is rare and such estimates difficult, vocational schools are too frequently engaged in training people for jobs that will not exist. When, however, they do forecast correctly, they perform a very useful service. If the United States were actually to adopt a full-scale program of long-range planned public works, the forecasts of the vocational schools would be automatically improved and their usefulness greatly increased. Indeed, it is probable that they would become an essential part of the planning itself.

### THE PROBLEM OF UNEMPLOYMENT

The considerable number of causes of unemployment which have been discussed in the preceding chapters should be sufficient evidence to support the proposition that there are many "problems of unemployment." There is no single panacea, no sure cure. The economic doctor cannot prescribe a specific cure for "unemployment" any more than the medical doctor can prescribe a specific cure for generalized sickness. It is this lack of homogeneity which is the real problem of unemployment. Unemployed persons do not carry any badge indicating the cause of their joblessness; in that respect all unemployed workers look alike. It is this fact which has created the illusion that there is some one device which will cure unemployment and has diverted attention from the necessity of painstaking analysis of individual types and cases.<sup>6</sup> Congressmen and newspaper editors have been especially guilty in this regard, possibly, it may be hoped, because of their desire for brevity.

Economists have been gradually accumulating the relevant data necessary to an adequate understanding of the problems and of their treatment. That this study must proceed is apparent. The existence of unemployment indicates that there are de-

<sup>6</sup> One of the greatest contributions toward a correct view of the multitudinous causes of unemployment was a pair of books by E. Wight Bakke, *The Unemployed Worker*, Yale University Press, New Haven, 1940, and *Citizens without Work*, Yale University Press, New Haven, 1940.

fects or sicknesses in the body economic which, unless treated, could reach a fatal magnitude.

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## Chapter 5

### WAGES

#### THE PROBLEM OF WAGES

Next in importance after employment is the remuneration of each job. Undoubtedly, many, if not most, men do not work for wages alone. But in the modern economy, most men must earn to eat. Mr. Dooley remarked years ago that "wan iv the sthrangest things about life is that th' poor who need th' money th' most ar-re th' very wans that niver have it." To them, the need for wages is eternally pressing upon them. Most of them have little in reserve, and dependence upon the weekly pay check is complete. Frequently, a small difference in the hourly rate is the difference between misery and comfort. On the other hand, the pay roll constitutes the largest single item of expense to most employers. A few cents per hour to each employee may make or break his business. It is natural that wages should be, as they have been, the historical cause of the majority of disputes between labor and management. It is also small wonder that wages have been a special object of attention to economists for many years.

The wage theories that have been advanced since Adam Smith published his *Wealth of Nations* in 1776 have been multitudinous in quantity and varied in character. Successive (and often unsuccessful) refinements of these theories have developed esoteric theoretical paraphernalia far removed from the wage paid by the boss to the working man. Wages, in most theory, include all "returns to personal effort," thereby including the salaries of corporation presidents, the fees of professional men, and the earn-

ings of proprietors resulting from their own efforts. The wages of economic theory thus differ from the wages paid by the employer to the employee as much as Ricardian rent differs from the rent paid by the tenant to the landlord. Therefore, wage theory, although extremely useful in dealing with theoretical problems of value and distribution, is of little if any use to an arbitrator who is faced with the job of setting a specific wage rate.<sup>1</sup> Out of the development of wage theory, however, have come many ideas which greatly help in the understanding of actual wage determination. In the following pages, theories *per se* will not be discussed; the student will have previously encountered them in his study of economic principles. This chapter will rather be concerned with an analysis of the processes by which wages are actually determined—the wages which are paid by employers to their employees.

An actual wage rate attached to a given job is compounded out of a mass of conflicting and interacting pressures. Like an atom, it appears stable and solid but is actually composed of unending energy, and its stability is more seeming than real. These pressures are commonly lumped together under the general name of “bargaining power.” “Coercion” is properly descriptive except that to many minds it implies a power located all on one side.<sup>2</sup> In wage making, there is a multitude of forces on both sides, all operating at once. The detailed alignment of these forces or pressures will vary from one wage rate to the next. This infinite variety, however, does not render them obscure or their analysis impossible. Upon inspection, certain generalized types of pressures are discernible and can be described and catalogued.

### FINDING THE FACTS

In approaching the study of wages, the obvious first step is to look at the facts. This, however, is confused by the many irregularities in the presently available knowledge. First among the

<sup>1</sup> In a correct etymological sense, the word “rate” seems inappropriate to describe a given wage. However, the usage has been sanctified by custom

<sup>2</sup> As used by Dr. John S. Gams, *Beyond Supply and Demand*, Columbia University Press, New York, 1946, p. 11



difficulties is an erratic definition of wages. Even if all salaries are eliminated from the definition by a "rule of thumb" such as that formerly used by the War Labor Board (see p. 3 above), not all true wages are specified or paid in cash. In many instances, for example, the cash wage is accompanied by certain perquisites, such as room, board, clothing, paid vacations, paid sick leave, retirement plans, or other material advantages which add an attractiveness to the job not suggested by the formal wage rate. To other wage rates must be added intangible forms of reward, such as desirable working conditions, good climate, or recreational possibilities, or even the degree of geniality of the boss. All these, taken together, bulk too large to be dismissed as an erratic exception. They are too dominant to be ignored as mere intrusions upon an otherwise smooth theoretical structure. This alone renders the record of wage rates inaccurate and difficult to analyze. The fact is that no wage rate stands alone; the other conditions of employment must be studied before it can have meaning. This can usually be done in individual cases, fortunately, and only by the amassing of such studies can specific wages be treated with realism and with the expectation of valid results. Many of the contemporary "national-income" studies of wages are invalid because they are concerned with wage rates only and neglect these other essential qualifications.

Statistical studies suffer from other defects. Frequently the data furnished by individual employers report formal wage scales only and do not indicate "personalized" rates which are actually paid. Some firms include supervisory salaries in their wage totals; others do not. An unknown but significant volume of wages is never reported to any statistical agency and therefore has no influence in establishing statistical results. Of course, it must not be assumed that statistical data are wholly valueless. Much of the sampling is undoubtedly excellent, and over a broad area, errors may probably be assumed to tend toward canceling each other. The results do show general trends, the principal regional differentials, and in specific cases may show accurate detail. Even if they were perfect, however, they would show only what wage rates are; they would give no clue to the question of what they should be.

The relevant facts must be seen in the light of an economy in which workers are presumably free to change their jobs and in which industry is free to change its production policy. That much, at least, of the existing American economy must be presupposed. A revolutionary doctrine of "abolition of the wages system" automatically forecloses any discussion of the wage system. Although the revolutionary program is interesting and important in itself, it does not have a place in the discussion of wage determination in this volume since it is impossible to discuss the wage structure of an economy in which wages cannot exist. The following discussion, therefore, accepts the contemporary facts in the United States and makes no attempt to formulate eternal principles which might be applicable to any possible or impossible economic system.

### THE DETERMINATION OF WAGE RATES

An inspection of the pay roll may prove that Joe Doaks receives a wage of  $87\frac{1}{2}$  cents an hour. Such an inspection does not prove that he *should* receive exactly that much, no more and no less, nor does it explain *why* his wage is set at that precise figure. Neither analysis of the marginal productivity of labor nor a breakdown of the national income can explain why he doesn't receive 87 or 88 cents instead of the fractional amount. There is no ethical compulsion and there is no "unseen hand" which inexorably determined that Joe should receive precisely  $87\frac{1}{2}$  cents for 1 hour of his labor.

On the other hand, the setting of his wage was not a product of whimsy nor did it arise out of unfathomable mystery. It was and is the product of definable pressures, of bargaining powers, some of which were consciously applied and some of which were not observed but which were forceful indirectly. In an individual case these pressures can often be described in precise terms. In talking about wages in general, as the following paragraphs are bound to do, generalized categories must be described.

## SUPPLY AND DEMAND

It is not intended to present here a "supply and demand analysis." Nor is there any attempt to draw an analogy between the determination of wages and the determination of prices. A labor market is so completely unlike any commodity market ever recorded that even the term should be used only in a general sense. On the other hand, the supply of and the demand for labor are economic facts and must stand as the primary bases for determining wages.

It used to be a common saying among workingmen that "wages are determined by the number of men at the gates." That is to say, a large supply of available and unemployed workers will tend to depress wages; a scarcity of labor, in relation to the demand for their services, will tend to increase wages. As will be seen later, this generalization is not strictly correct. It is subject to many modifications and counteracting forces, and yet it does suggest a basic truth. At any rate, if it could be imagined that there were no other forces, the generalization would be correct.

There are certain excellent illustrations of the profound effect upon wage levels which can be exerted by great changes in the supply of and demand for labor. The Black Death of English History (1348) drastically reduced the size of the working force in that nation. During subsequent years, the extreme shortage of labor forced the level of wages to unprecedented heights. The pressure was so great that it took place in spite of vigorous legislation to prevent it.<sup>3</sup> Employers were so eager to secure the assistance of labor that they became adept at evading or directly violating the laws. On the other side, the depression in the United States during the 1930's was accompanied by such widespread unemployment, resulting from a marked decrease in the demand for labor, that many employers (especially in agriculture and nonunionized industries) were able to force wages far below a level of bare subsistence. In both these instances, a shift in the relation of supply and demand resulted promptly in an alteration of the level of wages.

<sup>3</sup> Ordinance of Labourers, 1349; Statute of Labourers, 1351.

The numerical supply of labor, or, to put it in other terms, the size of the labor force, is the composite result of a number of factors. First and most obvious is the rate of natural increase of the population. In the United States, where the annual births normally exceed the annual deaths, the number of persons available for jobs increases every year. Since each additional worker is also a consumer, there appears to be a natural tendency for the number of jobs to increase automatically as the labor supply increases. This latter tendency, however, is more apparent than real, since the steadily increasing productivity of labor operates in the opposite direction and since the fluctuations of the business cycle prevent any constant correlation between labor supply and labor demand. In general, during a short-run period of business prosperity, the natural increase in the labor force is readily absorbed into industry. During a depression, however, it creates a steadily increasing volume of unemployment. In the first instance, the relative shortage of labor will exert an upward pressure upon wage levels; in the second, a marked downward pressure.

The total volume of population increase is affected, not only by the excess of births over deaths, but by the rate of immigration. During the last several decades of the nineteenth century, approximately half a million (occasionally rising to over a million) persons entered the country from abroad each year. The overwhelming majority of these immigrants were unskilled laborers, deliberately imported because they were docile and would work for very low wages. The presence of a continually and rapidly increasing supply of cheap labor made it difficult, and in many cases impossible, for the native American workers to share, through higher wages, in the increasing prosperity of American industry. In the iron and coal areas, for example, the American workmen looked with fear upon the continuous hordes of common laborers arriving yearly from Eastern Europe and the Balkans. On the West Coast, imported Chinese coolies proved to be such a threat to wage scales that labor leaders engaged in pseudo-vigilante movements to drive the Chinese out. Eventually the California State Federation of Labor assumed a leading part in lobbying the passage of the oriental exclusion laws.

Interregional migrations within the nation frequently create the same problems. As an illustration, the severe drought in the Great Plains during the thirties started a westward trek of thousands of dusted-out farmers and villagers. Moving as a human deluge upon the Pacific coast, they depressed rural wages through their competition for the already scarce jobs. This migration of so-called "Okies" was but a twentieth-century repetition of the great waves of westward migration which had characterized the development of American history in the preceding century, and each such wave had left its mark on the wage scales.

The size of the labor force is also affected by the availability of women and children for jobs. Especially in the decades preceding the First World War, the presence of many women who were willing to work for low wages in what was called the "sweatshop" made it possible for the rising steel industry to keep men's wages at a consistently low level. The history of the rise of English industry a hundred years ago is the history of low wages forced upon adults by the competition of small children. These facts led to the programs of the American labor movement in support of compulsory public education (a child in school is not in the labor market) and of minimum-wage laws for women and children.

The effect of population changes upon wages is chiefly seen in the general levels of wages, and they rarely affect individual wage rates in a directly traceable way. The size of the labor supply has a more specific effect on particular rates when the labor market is limited to specialized skills. Within the general laboring population are many noncompeting groups. In the search for jobs, locomotive engineers are not in competition with dance orchestra violinists; carpenters do not compete with electricians; bricklayers do not compete with stenographers. There is, of course, some duplication and some overlapping of skills, and certain skills are transferable from one occupation to a limited number of other occupations. In spite of this lack of definiteness, however, the concept of noncompeting groups is valid and stands as a limitation upon the effect of population changes upon wage rates. A general increase in the total number of workers, for example, may not be accompanied by a proportionate increase in

the number of skilled locomotive engineers. Therefore, an excess of workers over jobs may materially depress the general level of wages without depressing the rates in particular crafts or industries.

In discussing the numerical supply of labor, it has been necessary to consider the supply in terms of the demand. It is meaningless to speak of one except in relation to the other since neither can be used as an absolute figure. For example, if there were only 25 million jobs, the presence of 50 million workers would indicate a serious surplus of labor; but if there were 100 million jobs, 50 million workers would leave a critical labor shortage. Thus a presentation of the effects of numerical changes in the working population is meaningless unless consideration is also given to those factors which influence the demand for labor. First and most obvious among these factors is the degree of "prosperity,"—that is, the presence of an annual increase in the volume of business transactions in capital goods, in consumers' goods, and in services. This so-called "prosperity" is enhanced by an increase in the anticipated consumers' demand for goods. Ordinarily, industry operates on its anticipation of the prospective demand for its product. When there is reason to expect that demand will flourish, the industry plans full operation or even expansion, and the number of jobs available increases markedly. On the other hand, if demand appears likely to languish, layoffs occur. An extreme but clear illustration is found in the experience during the first few years of the United States' participation in the Second World War. The government, chiefly through its armed forces, became an insatiable customer for an incredibly wide variety of products. Thousands of manufacturers knew that Uncle Sam would buy, without practical limits, all the units that they could produce and at a price sufficient to assure a profit. With this prospect, the demand for labor soared to hitherto unheard-of heights, with prospective employers competing among themselves in the offer of wage increases. This is attested to by the fact that, during the first years of the War Labor Board's wage-stabilization program, a substantial proportion of the applications for wage increases were initiated by employers and that, where such applications were denied, a distressingly large number

of employers violated the law by making the increases anyway or by evading the Board's ruling through the use of "upgrading," technical "promotion," and other improper devices. The pressure upon employers to secure employees through the payment of high wages must indeed have been great.

On the other hand, 10 years earlier, during a great economic depression, the anticipated consumers' demand for goods was low and rapidly falling lower. Industry, seeking to retrench in all ways possible, inevitably sought to lessen the size of its pay rolls through reducing the number of persons on each pay roll and reducing the amount of the total wage paid to each person employed.

These illustrations, one taken from the peak of a global war and the other from the depths of a catastrophic depression, are extreme. To a less conspicuous extent, however, the same principles are true of the day-by-day and month-by-month operations of nearly all business establishments in the nation.

Closely related to the concept of the anticipated consumers' demand for goods, as a demand factor in determining wages, is the relative efficiency of each particular business concern. Economic efficiency refers to two principal characteristics: the strategic factors of location and modernity and the personal factors of managerial competence and diligence. Regarding the first, a plant that is well located with respect to raw materials, market, and labor supply has a distinct comparative advantage over the poorly located plant. Its advantage is even greater if it is a modern plant, well designed and equipped. Such an establishment can operate at a comparatively low unit cost and can afford to pay higher wages than plants with fewer strategic advantages. The management may even make it a policy to pay higher wages as an attraction to superior workmen.

The influence upon wages of the personal efficiency of the managers is perhaps more obvious. Inept organization of the work leads to low productivity for each man-hour of labor, and careless extravagance in overhead costs induces management to seek compensatory economies in labor costs. Incompetent management is always seeking to make ends meet, and since it is not usually aware of (or willing to admit) its own faults, it seeks to

lay the blame on labor and to complain that wages are too high. It may eventually go bankrupt, close the plant, and cease to pay wages at all. This is not to say that any manager who says that wages are too high is necessarily to be considered inefficient. That would be far from the truth. It is quite common, however, for managers who are inefficient to lay the blame upon wage rates, even though other and more efficient managers in similar plants are paying the same or higher wages and are still operating at a profit.

Inefficient concerns, or even whole industries which operate at a comparative disadvantage, may seek to offset wage increases by raising the prices of their products. If the consumers' demand is inelastic (that is, if it remains steady even with an increased price) such action may be economically feasible. It does not follow, however, that the price increase must equal the wage increase since the wage bill constitutes only one of the expenses of production. This proposition may best be presented through a simple illustration. Assume an industry in which one unit of product is manufactured with one man-hour of labor. The unit sells for \$3; wages are \$1 an hour. The other \$2 covers the expense of raw materials, rent, power, heat, light, management and marketing, and profit. Now assume that strong union activity forces the hourly wage rate up 50 per cent, to \$1.50. It is not necessary for the firm to increase the price of the finished units by 50 per cent, to \$4.50. Rather, an increase of 50 cents, or 16 $\frac{2}{3}$  per cent, will completely cover the direct increase in labor cost.

Since business firms vary greatly in their comparative efficiency, the institution of the union standard wage has created difficulties in this regard. The standard wage is a uniform scale, resulting either from strong union policy in negotiating individual contracts with employers or from the practice of industry-wide or area-wide collective bargaining in which one union represents all the workers and one association represents all the employers. Historically, many unions have sought the union scale as a means of eliminating the manipulation of wage rates as a factor in business competition. This policy can be economically justified on the ground that it forces firms to compete only on the basis of the efficiency of management and the quality of the



product. If there is no union among the workers in the industry, of course the problem does not arise. If all the workers in all the firms comprising the industry are unionized and secure a standard rate, then no one firm is at a forced disadvantage in its direct labor costs as compared to any other firm. In such a case the standard wage might be expected, in the long run, to achieve a result advantageous to the general economy of the area.

If, however, the industry is only partly organized, that is, if none of the employees of some of the firms belong to the union, and if the nonorganized firms pay wages lower than the standard union scale, these firms have a competitive advantage over the unionized firms. The latter recognize their disadvantage and may even help the union to organize the unorganized in their effort to achieve an industry-wide parity in labor costs. That this has been done more times than can be documented is common knowledge in industry and labor circles. Incidentally, it is appropriate to point out here that the so-called "make-work" or "feather-bedding" rules sometimes included in union contracts react in precisely the same way in their effect upon the competitive position of a particular firm. Make-work rules, however, may redound to the disadvantage of the ultimate consumer through a restriction of total production, whereas the standard wage does not inevitably have such an effect.

### CUSTOM AND CONVENTION

In economic affairs, as in all other matters, custom and convention are powerful forces. They account for many otherwise inexplicable facts about the wage structure and, at times, seem to be strong enough forces to resist the usually overwhelming pressure of economic interest. It is probable that each custom arose plausibly out of a fact and each convention out of an idea, but now the original plausibility is frequently lost in the obscurity of passing time. Certain crafts receive lower wages than other crafts simply because they have always done so. Even the government's wage-stabilization policy during the Second World War paid deference to the sanctity of prevailing wage differentials. That is to say, many follow-up wage adjustments were

authorized in order to preserve the historical relationship between two crafts, with no attempt to discover an economic justification for the proportional difference in the wages rates of the two crafts. An investigation, if it had been attempted, would in most cases have proved futile, since the only discoverable reason for many specific wage differentials is that they are customary. If the origin of the custom could be found, it is possible that it might have been the action of logical economic forces, but in the intervening years, the nature of each craft would have changed markedly so that the original economic reasons would no longer justify the differential. And yet the differential remains and is even accepted with little or no question by the followers of the craft that receives the lower rate.

A similar tradition has prevailed in the differential in wages paid to men and women for identical work. This is not to suggest that there are not some jobs which are better performed by men and others at which women excel, since men and women are not identical although they may be equal. There are other jobs which may be performed by men or women with approximately equal efficiency but in which a sex differential in wage rates prevailed for generations. For many decades waiters received a higher hourly rate than waitresses, and yet there has been no fundamental difference in the nature of the work performed by the two groups. Valid reasons for the difference undoubtedly existed once, but as the years went by, custom became the compelling reason. The War Labor Board (1942 to 1945) attempted to eliminate all sex differentials in wage rates, meeting only with partial success.

In still another way, custom and convention have been significant forces in wage determination. Certain large and conspicuous firms have long been recognized as price leaders in the industry of which they are prominent parts. Their actions in fixing their own prices have frequently been followed by similar action on the part of less important competitors. These conspicuous firms are frequently wage leaders also.<sup>4</sup> It is true that, to a large extent, this wage leadership results from the economic

<sup>4</sup> John T. Dunlop, *Wage Determination under Trade Unions*, pp. 128-129.

forces involved in competition. At the same time there is also something of custom and tradition in it. The small employer is often led to grant a wage increase in line with that granted by the giant competitor, not because he finds it immediately necessary from an economic point of view, but because he is convinced that "it is only fair." Certainly a wage increase in the big firm will lead a union to ask for a similar increase from the little firms, frequently giving no other reasons.

Even job evaluation is based fundamentally on custom and convention. Job evaluation is a part of a pseudo-scientific process which has been developed into a set of elaborate systems from the elementary studies inaugurated by Frederick Taylor before the turn of the present century. The whole process includes the careful and detailed analysis of each job, the classification of the various jobs into a hierarchy, and the evaluation, in wage terms, of each different level of jobs. This process gives the superficial appearance of an economically scientific method of determining what each wage rate should be. However, even when done on the most reasonable and intelligent basis, the process can suggest only that one rate should be higher than another by a certain proportionate amount (part of which is inevitably decided by custom and tradition). It cannot determine the proper level of the base rate from which all other rates are scaled. This manifestation of scientific management and industrial engineering must not be unduly disparaged since it has made, and can yet make, many valuable contributions. Those phases of it which presume to give the final word on wage determination, however, are more correctly described as the rationalization of custom and convention.

### ORGANIZATION

Wage rates are in large measure influenced by the circumstances arising out of the fact of organization, both among employees and among employers. Employees have organized into a variety of organizations, to be discussed in later chapters, referred to under the generic name of "unions." The primary purpose and function of most unions is to engage in collective bargaining, and one of the principal functions of collective bargaining, from

the union point of view, is to secure increases in wage rates. That they have done so is demonstrated by countless historical experiences.

If care is used not to carry the analogy too far, it is useful to compare the activity of a union to the activity of an association formed for the collective marketing of goods. A union, like the marketing association, tries to avoid the depressing effects of an oversupply of what it has to sell by developing a partial monopoly. When done by an industry, this is generally considered to be good business practice, and union leaders have learned their lesson from industry. Both through a partial control of the conditions of the job and through an attempt to maintain a useful measure of control over the supply of labor, unions have succeeded in forcing wage increases which undoubtedly would not otherwise have been then forthcoming. Presumably the increases that are economically justifiable would have been made eventually (assuming the generalized validity of the marginal productivity theory of wages), but it seems certain that long delays would have occurred and that nearly all wage rates, at any given time, would have been materially lower without the activity of unions. The comparatively low wages paid to unorganized workers, on the one hand, and the comparatively high wages paid to strongly organized groups, such as the longshoremen and the teamsters, on the other hand, attest to this proposition. The methods by which unions have accomplished such results will be treated later in this volume; here it is only necessary to point out the importance of the results in the determination of wages. They have influenced rates both through individual, small-scale negotiation, and through the method of the union, or standard, scale. It is perhaps impossible to find any specific wage rate which, upon close inspection, does not reveal some influence of unionism.

In an indirect fashion, unions have affected the wages of unorganized workers. This has resulted from (1) the fact that the union scale is frequently the scale of the "wage leader"; (2) the willingness of many nonunion employers to pay union wages in an effort to convince their employees that they would gain nothing from joining the union; and (3) that competition for quali-

fied labor often forces the nonunion employer to adopt the level of the union scale or be understaffed. There is no statistical basis for measuring the influence of unions on nonunion wages, but there can be no doubt that it has been considerable. During the Second World War, unions directly exerted an influence upon the wage rates of both unionized and nonunionized workers through their representation in the government's wage-stabilization program. Labor members of the War Labor Board and its subsidiary units, although selected from among the leaders of AFL and CIO unions, found themselves obliged to champion all permissible wage increases even though no members of their own labor groups were involved. Nonunion groups were somewhat slower in securing these increases, but this was not because they were neglected by the Board. It was rather because they had no leadership to inaugurate the request for an increase.

Frequently, collective bargaining is "collective" only on the labor side of the process. That is to say, groups of employees organize into a union and bargain with a single employer. There are many instances, however, in which groups of employers organize and bargain collectively with the union. Some of these employers' associations actually bargain on behalf of their member firms; others merely advise and support the individual companies which otherwise stand alone in the bargaining. In either case, their purpose is to counteract the influence of unions in the determination of wages and working conditions. Except during periods of extreme labor shortage, their counteracting force is therefore directed toward the lowering of wage rates or at least the resistance to wage increases. As will be explained in later chapters, it has been very much more difficult to organize employers into effective unity than employees. This has meant that strong associations, capable of material influence on wage rates, have been comparatively few in number and recent in time. It is therefore more difficult to assert with assurance that employers' associations have had a profound effect on wage determination. In a number of individual instances, however, it seems probable that they have been instrumental in assisting their member firms in resisting increases demanded by a union. But what is even more significant is the likelihood that they will steadily increase

in effectiveness in the future. The growth of industry-wide or area-wide collective bargaining, usually forced at the instance of the unions themselves, has led an increasing number of individual businessmen to seek the safety of numbers and has frequently forced employers to bargain as a group. As a result, new associations have been formed and old ones have been strengthened, and there is every reason to expect that, in the not so distant future, employers' associations will be an important and demonstrable factor in wage determination.

### ALTERNATIVES TO LABOR

In any industry or business, the wage rate is only one of the items that go to make up the cost of one unit of output. In most instances it is an important item, but there are always other important items, including the cost of raw materials, rent, interest, taxes, the overhead cost of management, and the cost of machinery and equipment. Machinery, by its inherent nature, is labor-saving. A rock, used for pounding by a primitive savage, accomplishes more work with less expenditure of labor than a bare fist. A carpenter's hammer improves on the rock, and a stamp mill is a specialized extension of a hammer. A large company engaged in gold mining might keep several stamp mills in continuous operation. But a lonely prospector in the High Sierras might take out so little ore during a year that a common hammer could do all the crushing that he needs to do himself. An investment in machinery, it is seen, is determined chiefly by the volume of work to be done by that machine as related to the cost of the machine. That is to say, its initial cost and its maintenance must be spread over the units of output. But whether or not the investment in the machine is economically warranted is a question involving the alternative costs. If the work can be done just as well and at less cost by using more labor and simpler tools, the investment would not seem justified. Thus the cost of labor becomes a factor in determining whether or not certain machines should be built and operated. For the same reason, the cost of machines becomes a factor in determining the amount that an employer can and will pay to an employee. Labor-saving

machines, both mechanical and organizational, are therefore instrumental in determining wage rates. Illustrations of the types of labor-saving devices were given above in the discussion of technological unemployment.<sup>5</sup>

There are still ports in remote parts of the world where fuel coal is taken aboard ship in baskets, each basket carried upon the head of a native who trudges from the bunker across the gangplank and down to the hold of the vessel, and then back, hour after hour. In a thoroughly modernized port the same ship will be coaled by semiautomatic machinery using very few man-hours of labor. The method in each case is determined by the same management, the cost borne by the same company. If it so desired, the company could install the semiautomatic machinery in the primitive port. In the modern port, the company could probably employ men to carry the coal in baskets (although probably not on their heads). There are two good reasons why the company does neither. First, the volume of work in the primitive port is insufficient to warrant the installation of expensive machinery and the training of skilled men to operate it, whereas the business of a modern port may so warrant. The other, and usually more important reason, is that in the primitive port human labor is very cheap and the imported machine comparatively expensive, whereas the reverse situation prevails in the modern port. Should the cost of labor in the primitive port go up sufficiently, the installation of the machinery would eventually prove to be less expensive. Management would then try to consolidate its coaling in fewer ports in order to increase the volume of business in each one and thus to get the most effective use of its investment in machinery. The result would be the employment of fewer workers, but at higher wages per worker. The wages of the great mass of unskilled natives, which were assumed to have risen substantially, would drop to zero. The few workers remaining on, however, would continue to get the new high rate. If, in turn, their wages continued to rise, the employers might eventually find it more economical to convert their

<sup>5</sup> See pp. 55-58.

ships to oil or some other fuel. Labor alternatives, then, stand as a top limit beyond which wages cannot go and long remain.

Wise labor leaders, as well as wise managers, are aware of this top limit. It is a decisive answer to those uninformed people who so frequently present the hysterical argument that a strong union can force wages up without limit. The limit is there, and it is crushing in its inevitable effectiveness. Even if the labor-saving machine is as yet uninvented, it would be foolish to assume that it cannot be invented. There is a potential machine to do every industrial job now done by labor, and somewhere it sets a top limit to the wage that labor can command. This is not merely a hypothetical prospect for the distant future. Every hour, every day, sees the installation somewhere of labor-saving machinery, and practically none of this would be installed if human labor were cheaper. Every wage increase asked by a union runs the risk of stimulating the use of some labor-saving machine or organizational device. This stands as a constant caution to thoughtful labor leaders; it constantly retards the demand for wage increases. If the caution is not heeded, the wages of some or even all the workers in the craft may drop to nothing through the final termination of their employment. The union may "fight a rear-guard action" against the machine, as the Musicians' union fought the theater organ, the movie sound track, the radio, and the juke box. But if the machine is cheaper than the human labor and the results as acceptable to the consumer, the machine will eventually win.

The influence of labor alternatives upon specific wage rates depends upon the circumstances. When, as in 1946, a mechanical cotton picker had not only been invented but was actually being manufactured, the prevailing high wage rates in agriculture stimulated the growers to purchase the machines. The principles of an effective machine were known; it stood ready as an immediate damper upon rising wage levels. Sometimes, however, the relationship between the machine and wages is neither apparent nor immediate. A mechanical strawberry picker, while presumably not impossible, seems unlikely for some time. At least, employers cannot turn immediately to its use when wages go up. Between these two extremes is a full gradation of possibilities of



labor alternatives. Thus some wage rates face immediate and obvious limitations, but all rates face potential limitations at undefined levels.

### PRODUCTIVITY OF LABOR

Closely related to the matter of labor alternatives, discussed in the preceding paragraphs, is the influence of labor productivity upon wage rates. It is obvious that an employer cannot continue to pay his employees more than the money value of what they produce and long remain in business. This patent fact, most easily recognizable in a small handicraft shop, lies back of the assumption that "the laborer is worthy of his hire"—that a man is worth what he gets and gets what he is worth. In a highly elaborated form, it lies back of the marginal productivity theory of wages.

It is incorrect, however, to contend that differences in wages bear any direct correspondence to differences in economic productivity. Wages are not determined by so orderly a procedure. Productivity is a factor beyond doubt. But it is only one factor among many and is far less important than is customarily assumed. Indeed, the "productivity of labor" is a confused and confusing concept and, except in specific and noncomparable cases, is not usefully measurable in the present state of theoretical and statistical knowledge. It can be measured only by dividing the total product of a firm or industry by the number of employees. Where wages are paid on the basis of an hourly rate and the nature of the work of individuals makes an accurate individual measure impossible, it is obvious why no other method of measurement can exist. Where wages are paid on a piece-rate basis and each individual "produces" a number of units which can be counted, a sort of productivity, useful for comparing one individual with another, can be ascertained. This latter is of no real use, however, in determining the productivity of the labor force or in setting wages since some employees, even in a piece-rate shop, are ordinarily paid by the hour, and their work influences the work of the others. For example, in a fruit cannery, the workers who prepare the fruit may be paid by the box. Their

productivity is presumably determined by the volume of work accomplished. But the engineers who operate the power plant and the machinery work by the hour, and their performance cannot be determined on a volume basis. Yet the effectiveness of their work contributes directly to the volume done by those preparing the fruit. In this case, also, the only way in which the over-all productivity can be measured is by dividing the total output by the number of workers. The output, of individuals as well as of the total labor force in a plant, depends upon a wide variety of conditions, among which the following are probably the most important.

### *1. Capital Investment in Machinery and Equipment*

All other things being equal, the output of labor in an obsolete and inefficient plant will be lower than in a plant that is effectively laid out with the most improved equipment. Labor-saving machinery is designed to eliminate some of the labor, thereby increasing the productivity of the remaining employees. Therefore, no comparison is possible between two plants, or two historical phases of the same plant, unless the machinery and equipment are identical in both instances.

### *2. Efficiency of Managerial Organization*

The ability of the individual worker to do his job depends in large part upon the smoothness with which the management functions. Workers may be held up waiting for materials to work on. Inadequate lighting may result in eyestrain, which hampers personal efficiency; excessive noise or poor ventilation may increase fatigue; poor quality in raw materials may lead to waste of effort.

### *3. Employers' Rules and Regulations*

Some years ago a unique "strike" occurred on the French railroads. It is said that the system was brought to a standstill by strict obedience on the part of each worker to every rule and regulation. Many business establishments are overloaded with rules that prevent workers from utilizing their own intimate knowledge of the job and improving their own efficiency.

#### *4. Union Rules and Regulations*

A number of unions, in defense against an expected decline in job opportunities or against a "speed-up" instituted by management, have adopted and enforce "slow-down" or "featherbedding" rules. Where these exist, output per worker is fixed at a specified maximum, rendering it difficult to make a statistical comparison with another plant in which the rules may differ.

#### *5. Quality of Resident Labor Supply*

A local population suffering from pellagra will yield lower productivity per worker than a healthy group. Workers living in a hot, humid, and sultry atmosphere may be less productive than those in a fresh, bracing climate. In general, differences in personal health and welfare will have a profound influence on industrial output.

#### *6. Incentives to Diligent Work*

Low morale on the part of workers will reduce their productivity. A manager who is noted for his unfairness and ill temper cannot secure the cooperative effort of the best workers. On the other hand, a genuine and honest system of incentive wage payments may greatly stimulate productivity.

#### *7. Rates of Wages*

If intelligently administered, high wages can be used to attract the most productive workers. A good workman at \$1 an hour may produce more than twenty times the volume produced by a coolie at 5 cents an hour. In this sense high-priced labor is sometimes the cheapest. There are many known cases in which the productivity of labor has been increased as a direct result of a wage increase. This will not always happen, of course, and cannot happen if all wage rates are raised simultaneously. It is nevertheless a force that frequently operates.

#### *8. Changes in Market Price*

Units of wheat cannot be averaged with units of steel, and tons of steel wire cannot be averaged with tons of steel rails. Therefore, the only way in which productivity can be measured,

affected or may actually be increased. It is not always correct that higher wages mean lower employment, as has frequently been assumed. Indeed, one limited study suggests that certain wage rates in the South average lower than comparable wage rates in the North and yet that productivity in the South is sometimes higher than in the North.<sup>6</sup> A conclusion to be drawn from the facts as stated is that labor productivity is not at present susceptible to precise measurement, and only in a very general sense or in a highly specific instance can it be said to be a discernible influence on wages. It is, however, possible that in the future a sufficient accumulation of economic data and an advancement in statistical techniques will make possible a more precise estimate of the relationship.

#### GOVERNMENTAL WAGE SETTING

Government (Federal, state, and local) has always and unavoidably exerted pressures upon wage rates, in one or all of three principal ways. The most obvious but least often used method is that of outright wage fixing. During the United States' participation in the Second World War, the Federal government established and operated a "wage-stabilization" program. Salaries were controlled by the Salary Stabilization Unit, Bureau of Internal Revenue, of the Treasury Department, and wages were controlled by the Wage Stabilization Division of the National War Labor Board. Since the latter agency is more significant for present purposes, it will be used for illustration, although the various stages in the evolution of its program will not be described in detail. The principle of the Board's policy was that wage adjustments must be made to correct inequalities, to allow for the increased cost of living which occurred before price controls were established and to meet special cases where wage increases were essential to the successful prosecution of the war. It was not intended to disrupt the existing pattern of wage relationships. Further, the Board intended to approve or disapprove

<sup>6</sup> Richard A. Lester, "Effectiveness of Factory Labor: North-South Comparisons," *Journal of Political Economy*, February, 1946.

wage changes, but not to "fix" rates. Gradually, however, the levels (curiously called "brackets") of rates to which the Board would approve changes became equivalent to standard government-set rates, and the Board became actually engaged in wage fixing throughout the nation. Thus, during the war years ending in the autumn of 1945, virtually every wage rate in the United States was set by government fiat, and the normal forces of collective bargaining became temporarily less important. The necessity of such a procedure in a modern "total war" is defensible, but at other times it cannot be justified unless the people are willing to accept the corollary of complete government control of all economic activity—an unlikely prospect in the immediate future of the United States. Normally, absolute wage fixing by government is not a factor in wage determination, but it must be expected to become so in times of war.

The second way in which government influences wages is through the establishment of minimum rates. This is now a common practice, both by state and national governments, and prevails in peace as well as in war. It is limited, however, to a setting of a minimum permissible rate. Samuel Gompers, head of the American Federation of Labor until his death in 1924, consistently opposed the principle of legal minimum rates, arguing that the low level of the minimum carried with it the connotation of approval as public policy and would therefore tend to become the actual rate in practice. In his trenchant phrase, it was the official "stabilization of poverty," and, since the unions would be obliged to fight all the harder for increases above the legal minimum, industrial warfare would be intensified. His opposition retarded the adoption of minimum wage laws, and for many years the only such statutes were state-enacted and related (with few exceptions) to women and children only. A gradual change in the attitude of the AFL leaders, coupled with the pressures exerted by the depression of the thirties, permitted the adoption in 1938 of the Fair Labor Standards Act, which established a national minimum in all trades in interstate commerce. The fears of Gompers have not been realized, and in most industries there has been little if any pressure to reduce wage rates to the permissible minimum. On the other hand, minimum

wage laws have probably affected the wage rates of a minority of the industrial workers of the nation. They have done some good and no serious damage. The good they have done may be characterized as, first, the establishment of a bottom against competitive cuts. In periods of depression and keen competition, the individual employer who cuts wages does so chiefly to secure a competitive advantage or to offset a competitive disadvantage. If none of the competing employers can cut wages below a typical minimum, none is placed at a disadvantage. If a particular firm cannot operate without paying wages lower than the lowest paid by other firms in the industry, it is an unjustifiably inefficient or badly located firm and perhaps should go out of business. The second desirable consequence of minimum-wage laws is that they remove the wholly unfit workers from the labor market. Any worker whose capabilities are so low that he cannot honestly earn the lowest wage rate paid by competitive industry is a suitable candidate for institutional care. He is better off, and society is better off, if he is removed from the working world and is taken care of as a mental or physical incompetent. Since there are so many minimum rate jobs which may be satisfactorily performed by persons of exceedingly low capacity, minimum-wage laws have not and probably will not result in any substantial increase in the number of people so classified as "unemployables."

Minimum wage laws thus increase the wages of those whose capabilities are sufficient to earn a rate as high as that established but who have hitherto received less. In addition, it will raise the wages of many who had previously earned slightly above the established rate. This results from the fact that a firm is usually obliged to maintain a certain customary wage relationship among its employees. For example, assume a store employing clerks at 40 cents an hour and head clerks at 45 cents an hour. The law establishes 45 cents as the legal minimum, and the clerks are raised to that rate. Head clerks will also have to be raised if the relationship between them and their subordinates is to be maintained. Perhaps they will be raised to 50 cents—perhaps only to 48 cents. Ordinarily the whole hierarchy of employees will not be raised simply because of a mandatory increase for

those at the bottom, but for a few people above the minimum some increases are likely to follow. Thus such legislation increases wages for an indeterminate number of persons whose wages were already as high as or higher than the legal minimum.

The third way in which government influences wage rates is through its function as an employer. Just prior to America's entrance into the Second World War, in December, 1941, the Federal government alone was the employer of approximately a million and a half civilians. By the spring of 1945, the number had increased to slightly less than four million—about one-ninth of all the civilians employed in the United States. These were Federal employees only; the complete picture requires the addition of several million state and local employees. Government employees are engaged in every conceivable pursuit, and throughout the entire economy government in one or another of its branches competes with private employers in the labor market. Just as certain large firms are "wage leaders" through the establishment of their wage policies, so is the government, the largest of all employers, a major "wage leader." Any change in wages paid to any significant group of government employees, either directly or through government contractors, has an inevitable effect upon the wages paid by private employers. High government scales in periods of labor shortage will tend to drive the wage rates in industry upward; low government wages in a period of unemployment will tend to depress the broad level of industrial and business wages.

### THE INTERPLAY OF FORCES

The preceding paragraphs make no pretense at being an exhaustive catalogue of the pressures which determine wage rates. At the present state of economic knowledge, only a foolhardy author would claim to have compiled a final and complete list. However, those listed are the principal forces. In their relative importance, they constantly shift and change. Sometimes one force alone provides the overwhelmingly important reason for a wage change; more frequently, a number of forces are at work at the same time. In a specific study of a particular wage rate,

it is usually possible to determine the comparative importance of the various pressures, and this is the day-by-day problem of management and union representatives and frequent problem of conciliators and arbitrators. Wages are by no means set by an unseen hand; rather, they emerge from the pulling and hauling of a confusing number of very visible hands. The difficulty is the identification of the relative power of each hand.

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## *Chapter 6*

### *WORKING CONDITIONS*

#### HOURS OF WORK: THE RECORD

Disagreement over the proper length of the working day has been one of the chief causes of industrial friction. Historically, it is second in importance to the disagreements over wage rates. Throughout the centuries of recorded history, until very recent years, the laborer's day has been long, frequently from sunrise to sunset. As recently as the 1920's, a textile worker in the South explained that she worked "from kin to caint," that is, from the time in the morning when it is light enough so that she "kin" see until it becomes dark enough in the evening so she "caint" see. Until the late nineteenth century, artificial illumination was not adequate for sustained night work, so that, although the work day was shorter in winter than in summer, it was roughly equivalent to the number of hours of sunlight, and the average day was long.

In 1800 in the United States, a 14-hour day, especially in summer, was commonplace, and even longer hours were not considered unreasonable. A frequent demand of unhappy workers at that time was for a 10-hour day, beginning at 6 A.M. and ending at 6 P.M., with an hour for breakfast and an hour for supper. These demands met with little sympathy among the "better classes," who held that workers did not possess the cultural qualifications to make proper use of leisure, and that "the devil finds things for idle hands to do."

During the last half of the nineteenth century and the first half of the twentieth, the average length of the working day and

working week underwent a shortening which, in comparison with the centuries of long hours, was sudden and dramatic. The following figures, representing average hours in American industry for census years, illustrate this remarkable change.

Year	Hours per day	Hours per week
1850	11.5	69 0
1860	11.0	66.0
1870	10 5	63.0
1880	10.3	61 8
1890	10 0	60.0
1900	9.8	59 0
1910	9.4	53.0
1920	8.5	51.0
1930	8.0	43.5
1940	7.0	38.1

The longer hours which prevailed during the war years, 1941 to 1945, are not shown since census years are available for only the earlier comparable data. However, those longer hours must be considered as the accompaniment of a severe emergency and therefore as a statistical aberration not revealing the trend.

### HOURS AND THE CHARACTER OF THE WORK

The reasons for the rapid and effective "shorter-hours" movement, after untold centuries of long hours, are not only pretty clear but are revealing of the true nature of the problem. Until the beginning of the Industrial Revolution in the late eighteenth century, most industrial work was of the handicraft type, and all was conducted in small shops. The workman engaged in a great variety of individual operations and ordinarily set his own speed of work. A shoemaker, for example, was not limited to a specific operation repetitiously performed on a specialized machine—he made pairs of shoes. He cut, fitted, nailed, and sewed at a bench alongside his employer; he conversed and relaxed, often with a

tankard of ale at his side. Although his hours at the bench were long, the time was lightened by gossip and song, by frequent pauses, and by the great variety of the procedures performed. Most important of all, when he completed a pair of well-made shoes, he could point to a good job well done. That is, he could take pride in his skillful craftsmanship, thus satisfying what Thorstein Veblen called "the instinct of workmanship." If his skill was not good, the example of his neighbor encouraged him to improve it.<sup>1</sup> Even though much of his work was drudgery, he saw the results of it, and the long hours seemed natural. The small, independent farmer of today is in much the same situation. His day may start before dawn and continue until after dark, but he does a great variety of chores, and during the day he is largely his own boss, stopping to rest or chat with neighbors at his own pleasure. Many modern doctors work long hours, but they also have variety, interest, and self-determination in the speed and method of their work.

The "shorter-hours" movement, then, resulted from the introduction of the factory system, from the refined division of labor, and from the monotony of machine tending. When industrial labor left the craftsman's bench and entered the power-driven factory, the question of hours became a critical problem. The factory system eliminated the great variety of operations which gave interest and freshness to the daily stint of prefactory craftsmen. Monotony was established as the dominant characteristic of an industrial job. The specialization of factory labor reduced the worker's operations to simple motions or to routine machine tending and took away from him the pride of achievement which can accompany only the completion of a finished product. There is small satisfaction in the repetitious installation of part number 12345-x on an automobile assembly line. Thus, the modern worker's vigorous objections to a long work day do not prove that he is lazier than his ancestors; they illustrate the fact that the nature of his work is very different. Routine monotony breeds

<sup>1</sup> This is not to glorify the Middle Ages, for, as my old philosophy professor pointed out, "the medievalists also had fleas." Shoddy workmanship existed then as now. But the workman's psychological reaction to his day's work was certainly different than at present.

fatigue, both physical and psychological. On the job there is no time for amusement or for thinking. The worker therefore seeks free hours for recreation and for participation in community life.

### HOURS AND THE WORK PACE

Hours, taken alone, are of little significance. A man may seek a 6-hour day in the factory, but when fishing or mountain climbing may revel in 10 hours of strenuous effort. The real significance lies in that which is done in the hours. In influencing the demand for the shorter work day, the most important factor is the extent to which the work requires routine and uninteresting monotony. To a large extent, this routine is a necessary corollary of the division of labor which accompanies mass production. The economic desirability of mass production is unquestionable, and it would be futile to advocate a return to medieval craftsmanship. The offset to monotony, then, must be found in the speed of work and the number of hours of work in each week.

In the first several decades of the twentieth century, the fundamental mistake made by efficiency experts lay in their attempt to increase output by continually speeding up the various operations of industry. The assembly line, a notable feature of modern mass production, is especially susceptible to a gradual speed-up. The worker must set his pace according to the pace of the machine, and an increase in the latter must be accompanied by an increase in the former. This can be accomplished by management in small accretions, each one almost imperceptible to the individual worker but in the aggregate constituting a more powerful driving force than the whip on the shoulders of the old galley slave.

The "speed-up" (or "stretch-out," as it is sometimes called) arose out of the fact that the attention of efficiency experts was directed to machine technology to the exclusion of psychological factors. Modern industrial machinery is expensive; its purchase and its maintenance entail heavy fixed costs. New inventions may soon render it obsolete. In order to justify its acquisition, it must be used to produce as many units of output as possible, and this means that it must be operated at maximum speed and

for as many hours of the week as can be arranged. A worker, on the other hand, comes free of any purchase price unless he needs special training; he requires only to be maintained. Even though the maintenance (in the form of his wage) may sometimes be high, there is still no capital investment in him as an individual. To the efficiency experts of a few decades ago, therefore, the account books of a large and impersonal corporation revealed only the need for faster and still faster operations. It was not until the workers showed stiff resistance that the all-important element of human strength and human psychology was recognized and partly understood.

Any person who has dug with pick and shovel or who has pitched hay has soon learned that a moderate pace is the most productive. The fast worker is soon exhausted, so the experienced man sets a slower and more rhythmic pace. Like the tortoise, he eventually passes the hare. Like the steady driver on the highway, he reaches his goal ahead of the flashy speeder. Experience on the job sets the most productive speed. Industrial engineers have at last learned this simple fact and speak of optimum speed rather than of maximum speed. They learned the lesson, in part, from observing that tired men make more mistakes, are more likely to be injured in accidents, and spoil more of the materials and processes of their work than do men who are comparatively fresh. A more vigorous teacher was the labor union. Union leaders were on the constant lookout for the speed-up and resisted it with whatever power they had. In many trades their most effective weapon was to establish fixed limits to the amount of work that any member might perform in one day. This device, called the "slowdown" in the United States (frequently called *ca' canny* in England), is labor's version of what industry calls "restriction of output." When a group of workers serve their own interests by rigidly limiting the volume of work which they will perform in a day, they are performing in a fashion identical to that of businessmen who curtail production or sales in order to maintain prices. In either case, there are times when these practices, if carried to extremes, are harmful to the interests of the general public. As long as employers indulge in an arbitrary speed-up and unions retaliate with a slowdown, the public

will suffer. Collective bargaining intelligently conducted on both sides provides the only satisfactory solution. Employers cannot expect loyal and industrious service from employees who are treated as though they were robots. Unions, on the other hand, cannot expect full employment, maximum wage income, and fair dealing from employers unless they permit their members to do a fair day's work. On this, at least, the cooperation of both sides is feasible and is actually occurring with increasing frequency.

### CONSEQUENCES OF FATIGUE

It is not difficult to imagine that the productivity of a worker will decrease as his fatigue increases, but it may be surprising to know that his total daily output may actually be less in a long week than in a shorter week. A wartime study in England, involving women employed at fine and delicate work, showed the following results:

Weekly hours of work	Average output per hour, units	Average output per week, units
66 0	108	7,128
47 5	169	8,028

These figures reveal that, with the shorter week, the hourly productivity increased markedly, and that the weekly output of each worker was greater in the short than in the long week. An American study reveals the same general result.<sup>2</sup> This was in the iron foundry industry, in 1943-1944.

Weekly hours of work	Average output per hour	Average output per week
59.7	100.0	100 0
52.4	130.3	112 7

<sup>2</sup> *Monthly Labor Review* (United States Bureau of Labor Statistics), Vol. 58 (June, 1944), p. 1140.

These illustrations are typical of many which indicated similar conclusions. The explanation lies in the fact that a worker facing a long day or week sets himself a slower pace and in the fact that fatigue induces a greater spoilage rate. A product that is ruined in the making does not emerge as part of the output. Tired hands and brains make many mistakes so that the rate of spoilage may increase at a greater rate than the working hours of the week are increased.

It must also be remembered that the long work week provides an incentive to individuals to "skip" a day now and then and simply not report on the job. The Bureau of Labor Statistics study cited above showed that absenteeism doubled when daily hours were raised from 8 to 9½, even though the work week was only 5 days long. Apparently some tired workers simply couldn't face the prospect of a 9½-hour day without more frequent days of rest. Those employees worked only a 4-day week of 9½ hours a day—a total of 38 hours. On an 8-hour day, they would have worked five days—or 40 hours. And they would have done better work!

The fact that experiments have shown that a shorter week yields a greater total productivity than a longer one, of course, does not imply that the idea should be carried to the point of absurdity. Just because a 48-hour week is more productive than a 70-hour week does not prove that a 1-hour week would be more productive than a 48. Somewhere, for every job, there is a happy point of optimum efficiency. Undoubtedly, the length of the optimum work day and week will differ from occupation to occupation and from industry to industry. Variety, interest, precision, and the expenditure of muscular and nervous energy are the basic determinants of fatigue, and they differ greatly in various jobs. Experience suggests that the optimum week, in the vast majority of instances, lies between 37 and 48, although there are undoubtedly exceptions. In the case of a specific job, only carefully measured experience can determine. In a few cases, such measuring has been done, but many further such studies are urgently needed. The hours question should be raised from the level of catch phrases to the higher level of intelligent analysis.

Historically, emphasis has been laid upon the length of the



working day. Since 1938 (Fair Labor Standards Act), increasing attention has been directed to the week as a unit of measurement. More recently, consideration of the guaranteed annual wage suggests the desirability of thinking in terms of a work-year. Since fatigue is not wholly a day-by-day matter, it appears that the longer view may be the most realistic. After all, a man is not easily worn out in a day. But fatigue is cumulative unless there are adequate periods of recuperation, and its long-run effects may be more disastrous than its temporary manifestations. Tuberculosis, alcoholism, and insanity are but a few of the more obvious diseases which may result from continued fatigue, and such results must be considered in any intelligent determination of optimum hours.

### HOURS AND WAGES

Since wages are usually calculated upon an hourly basis, the questions of wages and hours are inseparable. A union demand for shorter hours is frequently accompanied by a parallel demand for an increase in the hourly rate of pay so that the week's "take home" will not be reduced. Where a shortening of the work week does result in a proportionate increase in productivity, the maintenance of the same weekly wage is wholly justified. Beyond such a statement, however, it is impossible to generalize on this question, and individual answers will depend upon individual circumstances.

It is frequently asserted that employees do not really want shorter hours but demand a shorter work week as a device for increasing their take-home pay by the addition of overtime rates. For example, assume an 8-hour day at \$1 an hour. The worker earns \$8 in one day. Assume also that the agreement provides that overtime be paid at the rate of 150 per cent ("time and a half"). If the union can secure a contract provision calling for a 6-hour day and if the employer continues to operate on an 8-hour basis, an employee will earn \$1 for each of 6 hours and \$1.50 for each of 2 hours, yielding him a total day's earnings of \$9. This results in an actual wage increase of 12½ per cent, even though the nominal wage rate has remained unchanged. No

doubt such a wage increase is often the real motive behind an hours demand. If it is, however, the employer has it within his power to meet it with a compelling and rectifying answer. He can so adjust his operations that the contract work day becomes the actual work day and pay no wages at overtime rates. In the illustration, then, the worker would take home but \$6 a day. The employer's threat of doing this, especially if it can be shown that no increase in the hourly rate is justifiable, will probably forestall the union demand. If the union really wants shorter hours, it can accept them. This is pretty well understood by both employers and union leaders, and such disguised demands are therefore becoming more infrequent.

The reciprocal bearing of hours and wages upon each other is well illustrated by the Fair Labor Standards Act of 1938, which, although it deals with both, has been primarily influential in its effect on "take-home" pay. The Act sets no limit on the number of hours a worker may be employed but does provide that any person who works more than 40 hours a week for the same employer (in any occupation in interstate commerce) shall be paid for the excess hours at the rate of time and a half. Since many employers find it desirable to work the same employees for more than 40 hours, the resulting take-home pay is greater than it would have been without the Act. It is impossible to make an exact calculation of the extent to which this has resulted, but it seems likely that the hours provision of the Act has in this way increased the total pay roll of American industry more than the minimum-wage provisions have done. If the great amount of overtime paid during the war years (1941 to 1945) is included, even though the experience of these years may properly be called abnormal, there can be no doubting that the hours provision of the act has in reality been more of a wage measure.

Hours and wages are tied together once more in the often-expressed proposal (discussed in Chap. 4) to reduce the length of the working week in order to provide employment for more persons. As pointed out before, if this is done without an increase in the hourly rate of pay, there is grave danger that a large part of the working population will be thrown into a state of under-employment. If wage rates are increased, on the other hand, the

fact that this would be taking place in a period of declining business activity would render many employers incapable of meeting the higher wage bill, plants would be shut down, and unemployment would increase rather than decrease. In such a case, it would be no answer to say that the reduction of hours will increase individual productivity and therefore justify the wage increase, since in so far as it actually did increase productivity, it would not provide additional employment. In the long run, over decades, it may be that a gradual shortening of hours will increase business prosperity through stimulating the leisure expenditures of the working people. In the short-run situation, occurring during the downward slope of the business cycle, experiments with the length of the working week may do much more harm than good.

### HOURS AND THE PUBLIC WELFARE

Thus far in this chapter, attention has been directed primarily to the economic considerations involved in the hours question. That is to say, we have been chiefly concerned with the effects upon production. But it would be telling only part of the story to omit some reference to the human and social aspects of the problem. A man who devotes all his daylight hours to his job has little if any time for pleasure, for community activities, for devotion to his home and family, for cultural activities, or for the responsibilities of citizenship. He leads the life of a drudge, not of a man. It may be trite but it is very true that a democracy requires an informed electorate if it is to survive. The threat implied in Hitler's war should prove that democracy is not automatically safe. It must be ever alert, and its people must have time to think. The unthinking automaton was a good soldier in the environment of Frederick the Great, but he is virtually useless in the highly technical warfare which has developed recently. If war is to be avoided, a free and intelligent population is essential. This means that workers, who constitute the vast bulk of the people, must have time away from their jobs for all those activities necessary to the building of such a population.

Some employers argue that added leisure simply provides time

for vice and dissipation. This may sometimes be correct, but there is no reason to believe that there is a larger proportion of workers addicted to vice than is found in any other segment of the population. Even if there were, it is clear that excessive dissipation is more extreme among people working very long hours than among those with some leisure.

The danger of industrial accidents resulting from fatigue is much greater. If human consideration for injured workmen is not enough, society must remember that the dependent families of men who can no longer work may become public charges. The tragedies (and the public expense) resulting from excessive fatigue can be prevented, and to the benefit of all.

### INDUSTRIAL ACCIDENTS AND DISEASES

A discussion of specific industrial accidents and diseases is not within the scope of this book. To deal with them adequately would require a volume and to summarize them briefly is misleading.<sup>3</sup> Further, they provide problems in industrial engineering and medicine rather than in labor economics. However, it must be pointed out that they constitute problems of major importance. Government has already enacted a vast code of protective regulations, and private industry has occasionally added further protections, but much yet remains to be done if the heavy toll of accident and disease is to be reduced. Not all of it results from fatigue, as may have been inferred from the preceding paragraph. Many illnesses arise out of working conditions so unhealthy that the most vigorous worker is affected; others arise out of preventable carelessness. It is true that human nature is such that accidents can probably never be eliminated, but it is demonstrable that they can be reduced far below the present level. Programs to accomplish such a reduction provide another area in which cooperation between management and labor is essential and possible. Unions have an obvious interest in these programs and, where intelligently led, are willing to do anything to improve safety conditions.

<sup>3</sup> One of the best summaries (165 pages in length) is found in H. A. Millis and R. E. Montgomery, *Labor's Risks and Social Insurance*.

Closely related, and also of a technical engineering nature, are the problems of adequate heating, lighting, ventilation, the reduction of obnoxious noises and odors, and the improvement of sanitation and general cleanliness. These are fundamental aspects of working conditions and can best be improved through the cooperative efforts of employers and employee groups.

A temporary loss of wages attributable to accident or illness may have disastrous results for the worker, his family, and their arrangements for living. The extra expense of medical care, coming just when the family income ceases, quickly eats up the savings and proceeds to indebtedness. If for no other reason, this fact requires that every attention be directed to improving industrial sanitation and safety. It is to the interest of the employee, of the employer, and of the general public. In larger plants, first-aid stations and central infirmaries are necessary. Smaller plants may have to rely upon the services of a single nurse or of a near-by doctor.

Of major interest to employees everywhere is a program of sick leave, that is, an arrangement where workers whose illness is verified by a physician are entitled to be absent from work for a limited number of days in a year without deductions from their pay. Plans of this sort are increasing in number in American industry and are especially desired by the overwhelming majority of workers. Additional programs of medical insurance are still in an experimental stage, but their desirability is seldom questioned. It is reasonable to expect that considerable progress in this field will be made within the coming few years.

### COMPANY TOWNS AND STORES

Many industrial establishments are necessarily located in places remote from towns and cities. Coal and metal must be mined where the deposits are found; trees must be cut where the timber grows. This means that where such an industry is to operate, a town must be created for the habitation of the employees and their families. These towns are only as permanent as the source of the raw material of the industry, and some, such as logging camps, must be temporary or even movable. In other instances,

industrial plants are established outside of cities in order to take advantage of the lower land values and taxes of a rural area or in order to avoid traffic congestion. Towns built around these plants are usually intended to be permanent. In either case, it is almost inevitably the task of the employing company to advance the capital and construct the town.

Some of these towns have been made up of the cheapest shacks that could be constructed, with sanitary facilities too primitive for a congested (although small) population. Even recent history is replete with instances in which the company was the only landlord in town, in which rents were unusually high and housing conditions abominably bad. Such communities breed poverty, crime, and disease, and the evil results spread far beyond the limits of the town. The employer who operates such a town is being subsidized not only by his own employees but by the entire county or state. Where a strong union exists there is a tendency for such exploitation to be prevented, but where there is no union to fight for better conditions, public authority must intervene.

Not all company towns, however, are shack towns. There have been some notable experiments in the building of "model towns" by great industrial concerns. Pullman, Ill. (railroad cars), Kohler, Wis. (plumbing fixtures), and Hershey, Pa. (chocolate), have been conspicuous examples. In each case, a benevolent management has sought to build an attractive, healthy, and happy community, complete with parks, theaters, churches, athletic fields, nursery schools, public education, and utilities. In each case, however, to the amazement of the management, trouble has arisen, accompanied by a bitter strike. The trouble was an outgrowth of the excessive paternalism involved in such experiments, and the story of those towns should be studied in detail by any employer whose benevolence is inexperienced.

It is reported that the following saying went the rounds of Pullman prior to the 1894 strike: "We are born in a Pullman house, taught in a Pullman school, attend a Pullman church, exploited in a Pullman shop, buried in a Pullman grave, and go to a Pullman hell!" Similar reactions were felt, in much more recent years, in Kohler, Hershey, and other similar towns. Workers as

a rule want good homes and pleasant towns; their objection lies in the company domination which company ownership permits. They prefer that the company spend the same amount of money in the form of higher wages, permitting the employee to select and pay for his own choice of cultural and recreational activities. In each of the instances mentioned, the company was obliged to adopt the only possible course and make the houses and tracts available for sale to workers and other private persons, gradually permitting the towns to emerge from company ownership.

Freedom from company landlordism, however, is small comfort to the employees if their homes are not free from company domination. Many small towns, wholly dependent for their economic existence upon a single company, are not free even though privately owned by individual citizens. The company may dominate the community through control of the banks and other lending facilities, through domination (as the largest contributor) of churches and charitable agencies, through political influence and control of the police, and through threats of a calamitous shutdown. The record of the La Follette Committee's investigation of the coal towns of West Virginia presents a detailed account of the depths to which industrial relations can sink in company-dominated towns.<sup>4</sup> Similar stories could be told of steel towns in Pennsylvania, textile towns in North Carolina, farming towns in California, and many others. Unless the management is very wise, the opportunities provided by its dominant position seem to lead it along the path of intrigue, deception, and finally violence. Those which are very wise carefully refrain from taking the first steps of domination and adopt a "hands-off" policy toward the business and social life of the community. Wherever it is necessary or desirable for the company to enter into the control of community life, it can do so safely only if it has the consent and collaboration of the representatives of the employees.

A company-owned store, if it has a monopoly in the area, is susceptible to the same abuses as a company town. An old practice, now generally illegal, was for management to pay a portion

<sup>4</sup> *Violation of Free Speech and Rights of Labor, Hearings*, USS, 75th Congress (La Follette Committee), Parts 9-13.

of each worker's wages in scrip which was exchangeable only at the company store, making it impossible for them to shop elsewhere. By keeping prices high, the store arranged to return a considerable portion of the pay roll to the company's till. Even without the scrip system, the company may be able to prevent the entrance of competitors and so continue to charge exorbitant prices. This procedure, like the company town, can lead only to dissatisfaction and conflict, and the company's petty pilferage is soon expended in fighting the employees. Robbing his employees is not a game that an employer can continue to win. If, because of its isolation, a company must maintain a store, it should be careful to keep prices as low as, or lower than, the prices charged in the nearest towns. Even better, it might secure the participation of employees in a cooperative store, cooperatively managed.

### COMPANY WELFARE PROGRAMS

A great many business concerns, while not establishing company towns, have adopted a modified and small-scale version of the same idea. Such versions range all the way from the provision of equipment for a company athletic team to an elaborate system of "social service" throughout the community. These are not ordinarily dangerous in character, but occasionally serious abuses have been injected into them. The more common forms have been the provision of medical care, the building of playgrounds and parks, the holding of entertainments, the sponsoring of athletic teams and contests, and the conduct of special picnics and other social events. Less common and more elaborate forms include the maintenance of service to assist workers' families in finding adequate homes and even in arranging for financing the purchase of homes and other similar matters completely dissociated from the job or the plant.

Ostensibly these programs are announced as the benevolent gift of a kindly employer, and sometimes indeed they are. Ordinarily, however, they are conducted for business reasons and are expected to increase the company's profit. This, if it is honestly done, is a perfectly legitimate procedure. Work performed by happy and healthy employees is superior to that done by drudg-



ing slaves. High morale on the part of employees leads to more loyal and diligent service. Furthermore, some employers, like the famous Robert Owen a century ago, hate the aspects of poverty, distress, and slovenliness and set out to do something about it. These are more than merely benevolent; they believe that planned expenditures for welfare will yield higher returns for the workers than if the same amount of money were turned over to them in wages for their haphazard use. On this they are probably correct. But, like the company-built "model town," the employer's motives will be subject to suspicion unless he is completely "aboveboard" and unless he cooperates freely with the representatives of his employees. Too often, employers have used welfare programs as substitutes for wage increases or as levers for attempting to overthrow a union of employees. As a result, the good plans have often been condemned with the bad. The old-time radical poet Will Herford stated this neatly:

Sing a song of "Welfare,"  
A pocket full of tricks;  
To soothe the weary worker  
When he groans or kicks.  
If he asks for shorter hours,  
Or for better pay,  
Little stunts of "Welfare"  
Turn his thoughts away.

Sing a song of "Welfare,"  
Sound the horn and drum,—  
Anything to keep his mind  
Fixed on kingdom come.  
"Welfare" loots your pocket  
While you dream and sing.  
"Welfare" to your paycheck  
Doesn't mean a thing!

Sing a song of "Welfare,"  
Forty 'leven kinds:  
Elevate your morals,—

Cultivate your minds.  
Kindergartens, nurses,  
Bathtubs, books, and flowers,—  
Anything but better pay  
Or shorter working hours.<sup>5</sup>

It is strange but true that employers, with only occasional exceptions, continue to overlook the natural and human objection to paternalism. They try deliberately to improve the morale of their employees by providing all sorts of welfare schemes and fail to recognize the most important ingredient of morale—the independence of the worker in determining the activities of his private life. If the employer's welfare plans are honest, he can proceed with them and really build morale through a sharing of the formulation of plans with representatives of the workers. This is true whether the workers are unionized or not. If they are members of a union, the employer can turn to the union officers and ask their cooperation in preparing the program. If employees are nonunion, each unit in the shop or plant can elect a representative to a welfare committee. It is a rare case if the problem, persistent as it is, cannot be easily solved. Of course, where the employer's proposal for welfare work is a devious route toward wage cuts and union wrecking, the cooperation of employee representatives cannot be secured. But in such a case, it is better if the employer is forced either to show his hand or to abandon his deceptive project.

### INTELLIGENT SUPERVISION

It takes neither intelligence nor skill for a supervisor to say to a subordinate, "You're fired!" A manager or foreman who is frequently obliged to discipline the men under him is probably very poor at his job and may well be the one who really ought to be fired. A capable and expert manager is one who can get the best

<sup>5</sup> I have sought to discover a copyright owner of the verse in order to secure permission to quote. The search has been unsuccessful. I have quoted it from a labor newspaper, which had quoted it without securing permission. It may not be copyrighted, but if it is, I hope the quotation will be approved.

work out of his subordinates without abuse and friction. The skill or intelligence of management determines one of the most important (and most intangible) of the various factors which make up working conditions. It is hard to measure, but it creates impressions which spread widely in employee circles. Good workmen shun plants with a reputation for poor management; unions are likely to be in frequent or continual controversy with them. Sometimes well-meaning corporation executives, harassed by labor troubles, blame "labor agitators" when the real fault lies in the procedures at the lower management level.

A similar situation exists when an employer manifests nothing but hatred and distrust of a union which may have members in his employ. If he confidently expects that he can get nothing good out of the union, his expectations are likely to be realized. The opposing situation, in which the union distrusts the employer, is also true, but generally it is the employer who sets the pace. Since he is the only one who can carry through his plans with consistent secrecy, he must take the lead if candidness and aboveboard honesty are to prevail. A union which has long had occasion to distrust an employer and against which the employer has waged continuous warfare can hardly be won over by a single honest gesture. With patience and integrity, however, the union can eventually be convinced that the employer is dealing fairly and honestly, and in the course of time the union is likely to respond with the same kind of dealing. If men are treated like animals for a sufficiently long period of time, they will act like animals. But they will respond like decent human beings if they are continually treated as such. Of course, a single employer may be helpless to change the leadership of a large union. A rough and tough leadership may be necessary in dealing with the other employers of the industry. As decency spreads among employers, however, it will certainly spread among unions. This has already been demonstrated time and again, and the many decent employers in the nation are in large part responsible for the appearance of so many decent union leaders.

This sort of decency is, after all, merely a form of intelligence. A belligerent employer displays a lack of understanding of both human nature and economics; he courts trouble and he gets it.

The system, followed by too many employers, of planting spies in labor unions is the best illustration of the point. Sooner or later the presence of the spy will be discovered, and from then on the employer's motives will always be suspect; his allegations will not only be disbelieved but will be searched for hidden meanings. It usually takes a change in the personnel of management and years of patience and fair dealing before the representatives of the workers can be convinced that the employer's "reform" is genuine and not a trick. As the burnt child fears the fire, the deceived worker fears the protestations of good will where only ill will has been found before. The sooner the employer embarks on a policy of genuine good will, the sooner will the union be convinced of his sincerity and be willing to cooperate.

### DISCRIMINATION AMONG EMPLOYEES

The security of the individual worker's tenure in his job, his safety from arbitrary or whimsical demotion or dismissal, his chances of promotion—these are all essential features in his status. The assurance that he will receive fair treatment in such matters is an all-important condition of work. Where a union is in contractual relationship with a firm the method by which such matters will be handled is usually provided in the agreement. Such contract provisions will be discussed in Part Two, Chap. 11. The problem exists, however, even when there is no union and no contract. Every employer of more than a few persons, even though they are all nonunion, must continually face the problems of promotion, layoff, discharge, and other matters where discrimination may enter or be suspected of entering. Few would deny an employer the right to discharge a worker for gross negligence, incompetence, or dishonesty. But many men have been fired because their supervisors had slept badly the night before and had come to work in an irritable or beligerent mood. Other foremen have fired subordinates as a childish show of importance and authority or because of the foolish notion that a display of rigorous discipline is needed occasionally "to keep the rest of the boys in line." To the worker, however, his job stands between his accepted standard of living and prob-

able disaster. Even if he himself is not a victim of unreasonable authority, he knows when the man working at the next bench has been discharged without just cause, and he fears for his own future. Only in rare and abnormal cases will fear make him a better workman. Ordinarily it encourages him to "cheat at the job," to "get even with the boss," or perhaps to ingratiate himself with the supervisor at the expense of his colleagues. In any case, the result is a net loss to production through a decline of efficiency.

"Layoffs" differ from "discharges." A man is discharged for personal reasons, and the employer expects to replace him at once with another man. A man is laid off, however, when the employer is contracting operations, when there is less work to be done, and consequently when fewer employees are needed. The question arises: Who should be laid off first? Certain "key jobs," naturally, will need to be filled longer than others. If a whole job classification has become superfluous, then all holders of such jobs will be laid off. If, however, within one classification, 10 out of 50 workers, for example, are to be laid off, it is a real problem to decide which 10 should go and which 40 should remain. At first glance it will appear obvious and simple that the 10 who are least efficient or least productive should be laid off. It is usually not simple. Unless the work done by all 50 is precisely measurable and unless the element of personal whim on the part of straw bosses and foremen can be wholly eliminated, the rating of 50 workers from "best" to "worst" is an exceedingly difficult matter. In many cases it is impossible. Further, an employer may wish to retain a worker who is mediocre in skill but noted for his loyalty and faithfulness to the boss and lay off a fast and efficient worker who is considered a troublemaker. Unless some systematic and clearly understood procedure for laying off workers is established, there will develop the same sort of demoralized fear that arises from indiscriminate discharging. The employer, seeking to retain the most efficient men, may actually turn the whole shop into complete inefficiency. No one has yet devised a perfect system for determining the order in which individuals should be laid off, demoted, or promoted. Any plan, however, which seems generally reasonable and which is clearly

understood in advance by all persons concerned is likely to function with very little friction. The order of demotion and promotion, it should be noted, raises the same basic problem of discrimination that arises out of the order of layoff.

It should be remembered that a worker tends to assume a feeling of possessiveness toward a job that he has held for some time. He comes to think of it as *his* job. This is a natural and quite probably a desirable human trait. Out of this feeling has arisen the most usual method of determining the order of layoff, demotion, and promotion: the establishment of the principle of seniority. In its simplest form the principle provides that the last to be hired shall be the first to be demoted or laid off and that the one who has been on the job longest shall receive first consideration for promotion. It does not follow that the senior man is necessarily the best man, but at least it can be assumed that he has had the most experience and the presumption is in his favor unless there is explicit evidence to the contrary. This is more true in the large plant where the personal characteristics of individual workers are not well known than in the intimacy of a small shop. Application of the seniority rule will occasionally result in unfortunate choices, but the damage done will usually be less than that which would accompany the demoralized state attendant upon the use of haphazard or whimsical personal judgment.

### WAGES AS WORKING CONDITIONS

Although wages, as such, were discussed in the preceding chapter, they must appear again in their bearing upon working conditions. The wage scale in itself is not ordinarily classed as one of the working conditions, but the ways in which it is calculated and paid are definitely so. In many industries there have evolved most complex methods of computing the earnings of employees, in some instances so complex that the worker cannot calculate the amount he has earned and must blindly accept as correct the figures on his pay check. Such a system of confusion invariably leads to controversy. In fact, it furnishes one of the most easily removable sources of conflict in American industry. A simple, clear, and easily comprehended method of calculating earnings

is fundamental to good management. Chief among the wage items which must be clear are the rates of straight-time and overtime pay, shift differentials, premium rates, supervisory rates, and incentive programs.

Straight-time pay is normally specified by the hour or by the piece. It is the basis of all wage calculations—the foundation upon which the superstructure of actual earnings is built. It is paid for work done during the “regular work week,” ordinarily 8 hours a day for 5 days a week. When an individual works during additional hours he usually receives overtime pay which in most cases is calculated at the rate of 150 per cent of the straight-time scale. This is designed to reward the worker for the excessive hours of labor and to encourage the employer to organize his plant in such a way that overtime hours will not be necessary. Many firms avoid overtime through the employment of more than one shift. That is to say, one group of workers is employed during the regular hours of the day. When 8 hours have been completed, these workers leave, and another complete group comes on duty. In some cases a third shift permits continuous operation throughout the 24 hours of a day. A night shift is usually not so desirable as a day shift since it interferes with the normal hours of sleep and entertainment. Therefore many employers have found it necessary to pay a slightly higher wage on the night shift in order to attract workers to accept such employment. Where such an additional wage exists, it is usually between 4 and 10 per cent of the straight-time rate and is called a “shift differential.”

Some firms practice “rotating shifts,” that is, each worker takes his turn, usually for 2 weeks, at the less desirable hours. The employer then argues that no one worker has more unpleasant hours than any other, and unless a strong union persuades him to the contrary he will pay no shift differential. The argument becomes valid only when all employees on a rotating-shift basis receive a straight-time rate slightly higher than that prevailing in the industry for daytime hours. Rather than attempt to maintain that sort of vague offset, it is probably better to pay a night-shift differential which is understood by all workers and which will arouse no suspicions.

Sometimes a special work assignment will be undesirable for reasons other than the hours during which it is to be performed. Longshoremen and warehousemen, for example, are justifiably reluctant to handle high explosives, dangerous chemicals in bulk, and unusually obnoxious products like green hides. Physical danger beyond the ordinary, and excessive wear to clothing and personal equipment, should not be borne solely by the employee since they are caused in the sole interest of the employer. To induce workers to undertake these special jobs and to compensate them for the undesirability, the employer is often obliged to pay what is called a "penalty rate" or "premium rate." Longshoremen are paid a slightly higher wage when handling "penalty cargo" than when handling general cargo. Such a device may readily be seen to comprise a part of the broad concept of working conditions. Penalty rates of various sorts are found in the practices of a number of widely different industries.

### WORK INCENTIVES

All the conditions mentioned in the preceding paragraphs serve, in a broad sense, as incentives to good or to bad work. Other things being equal, good working conditions encourage good work, and vice versa. Improvement in working conditions usually results in an increase in the efficiency of labor. This much has been demonstrated time and again. However, it is impossible to measure the effect precisely. Good faith and good will, which must lie at the base of improvements, are real but intangible and do not lend themselves to monetary or statistical measurement. Industry has therefore sought tangible incentives—cash inducements arising directly out of the quality of the work performed. The most elementary form is the simple and traditional piece rate—the payment of a specified sum for the performance of a certain prescribed task. If the worker shirks and completes an unusually small number of units of product, his earnings will be proportionately small. On the contrary, the more attentive, diligent, and efficient he becomes, the greater will his earnings be. Properly speaking, a piece-rate system is not a true "incentive" system since it can never apply to all the workers in any given



plant. As pointed out in Chap. 5, where it was shown that a piece rate does not provide a correct measure of productivity, piece workers are invariably dependent upon hourly workers, and hence their speed or efficiency of work may be beyond their control. A true incentive system is one which provides an incentive to all the workers and in which tangible results can be shown. This can be accomplished through a careful establishment of the over-all volume of output for the plant followed by provision for a bonus to be divided among all employees if the volume of output is increased without any change in the number of employees or the equipment used. This puts pressure on employees to attempt to induce each other to work diligently and well.

The time-honored objection by workers to the piece-rate system arose out of its abuse by unscrupulous employers. This consisted in reducing the rate whenever production was increased so that workers were producing a great deal more without proportionately increased earnings. An incentive system ceases to provide the incentive if any such abuse is likely. Hence, to make it successful, there must be assurance that increased effort by workers will continue to be accompanied by proportionately increased earnings. This can exist only if the workers or their representatives participate equally with the employer in determining the rates. Confidence is the primary requisite for its success; plans based on mutual confidence have succeeded while others tend to fail.

A piece-rate system worked out jointly by the employer and the union can be so devised as to provide an incentive to the unusually fast worker without penalizing the average worker. When the union is strong and vigilant, a sufficiently high base rate of pay can be established to guarantee a living wage, comparable to an industry standard, for the mass of the workers. Premiums above that base can be paid for exceptional work. When that is established, the traditional objections of unions disappear. Even so, however, it is not an adequate incentive system unless it provides an incentive to every worker in the plant.

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## Part Two

### COLLECTIVE BARGAINING

The problems discussed in Part One arise out of the relationship between employer and employee, regardless of the affiliation or nonaffiliation of either with a bargaining organization. They are as inevitable in nonunion shops as in those which are completely unionized. Where unions do exist, however, the problems take on a different color, and new problems arise. All problems become involved in collective bargaining and must be studied in that light. It is this which Part Two is designed to do.



## *Chapter 7*

### *THE BACKGROUND OF COLLECTIVE BARGAINING*

#### SLAVE, SERF, AND FREE LABOR

It has been alleged that the problems arising out of the employer-employee relationship have always existed and will presumably continue to exist forever. Upon this assumption might be based the conclusion that there is no solution to the problems and that nature should therefore be allowed to take her course. This allegation is as fully incorrect as the catch phrases from which it is derived—"there is nothing new under the sun" and "history repeats itself." The contemporary labor movement is very definitely something "new under the sun," and there is no reason why it may not become something entirely different in the future. The labor unions and the employer associations of modern America were created and shaped by the forces of modern American history. Like every other group movement, they owe a great deal to the past, but it is to the comparatively recent past.

Throughout the thousands of years which are commonly characterized as "ancient history," a major portion of the hard work of the world was performed by slaves. The Hebrews, the Persians, the Egyptians, and the Mongols of the pre-Christian era recognized the institution of slavery. The slaves were frequently of the same race as the masters, were usually acquired through capture in battle, and ordinarily received their freedom after a regularized interval of years. In most cases, apparently, they were reasonably well treated, but it was they who performed the

heavy work of industry and commerce. In ancient Athens a similar system was highly developed, most of the slaves having been the conquered citizens of other Greek city states. Slaves comprised the bulk of the Athenian population, greatly outnumbering the free citizens. They performed virtually all the work, including much of the managerial work. At the Greek-owned salt mines in the Iberian Peninsula, everyone, from top management to meanest laborer, was a slave. It appears that free citizens gave their time to warfare, oratory, and debate. In Rome a similar situation prevailed, with slaves doing the economic work of the empire.

Under the slave regime, the free laborer could not exist. Except within the limits of the master's generosity there was no individual bargaining. The slave did as he was told and dared not ask for anything. The master could put him to death with no accounting to the law since the slave was a chattel like a dog or cow. With no individual rights, there could be no collective bargaining. There were occasional rebellions of slaves, but in no sense were these comparable to the economic action of modern labor unions composed of men and women who possess the rights of free citizens.

The slaves of the ancient world were personal property and could be bought, sold, or set free. On a different plane were the serfs of the Middle Ages, who were akin to slaves in the sense that they did not have the rights of free citizens but were "bound to the soil" instead of to the master. They were established on land belonging to a lord. The latter could not buy or sell individual serfs, but if he sold the land, the serfs went with it, like trees. In the rural economy which dominated the Middle Ages, they did the work of production and supported the manorial lord, and their rights were pretty generally limited to those he chose to give them. As in the slave system, the master was responsible for the health and well-being of the serfs as well as for their tasks. In neither system was there any possibility of united action or collective bargaining upon the part of the workers.

The situation was somewhat different in the medieval town. Manufacture was limited to the small craftsman's shop, presided over by a master who was the owner and also worked at the

craft himself. Employed by him might be one or more "journeymen" and one or more "apprentices." The latter were young people learning the trade, bound to serve the master for a specified period of years. They did not receive wages as such but were supported by the master who also taught them the craft. They had practically no rights and were, in all essential respects, temporarily on the level of slaves. Journeymen were workers who had completed their apprenticeships but had not yet amassed sufficient capital to establish themselves as masters. They were free to quit and seek other jobs, but since they were widely scattered, worked in very small shops, and each aspired to become a master, there was no likelihood of unified action among them.

In this situation developed the medieval guilds, which grew to be powerful organizations having weighty influence in the economic, political, and religious life of the community. But the craft guilds were not the ancestors of modern unions since they were dominated not by the journeymen but by the masters. It would be somewhat less incorrect to say that they were the ancestors of modern employers' associations. Even this is not accurate since both masters and journeymen belonged, with the former in control. These organizations were concerned with the whole life of the craft and of its practitioners, and the masters of the craft provided the leadership and direction of all affairs.

As the population grew it was natural for the guilds to become increasingly exclusive in membership, and not all journeymen were admitted, virtually eliminating these unfortunate outcasts from the trade. Only after they became sufficiently numerous to form "journeymen's guilds" which excluded masters did a form of organization come into existence which might properly be called the ancestor of unionism. Journeymen had found it increasingly difficult to become masters, and anticipating a permanent career as employees, they sought to improve their conditions of work. "Free labor" had at last come into being and at a time when economic developments were beginning a rapid evolution. For this was the first stage of the great upheaval in custom and in practice which the historians call the Industrial Revolution.

Meanwhile a system of "merchant capitalism" had been developing. Enterprising individuals, graduating from the level of



year. Adam Smith published his epoch-making *Wealth of Nations*, which became the first modern best seller. This work determined the policies of a century of British prime ministers, laid the groundwork for the fostering of British industry at the expense of domestic agriculture, and pointed out the productive value of a "division of labor." In the same year a practical steam engine was devoted to industrial purposes—the first long step in the creation of modern industry.

Steam power took spinning and weaving from the peasant home and placed it in the factory, while American independence and Smithian policies encouraged the founding and growth of the new industries. It was this conjuncture of great historical events which created the modern labor movement. First, the enclosure of common lands had left a residue of landless, propertyless rustics. Second, the new factory system had provided central workshops in which the displaced peasants could find employment to keep themselves alive. Around the factories there grew industrial towns, and to these towns the sons of serfs migrated, selling the labor of their backs and their hands because they had nothing else to sell. For the first time in history there appeared a large class of people who were wholly dependent upon wage jobs for their livelihood. They were poor, ignorant, unskilled, and often desperately in need of a minimum of subsistence.

Employers, too, were ignorant or, at best, inexperienced. Their factory buildings were often reconverted barns and their understanding of industrial processes was rudimentary. Competition among them was keen to the point of bitterness, and the only known method of staying in business was to keep the wage bill as low as possible. As a result there prevailed working conditions far worse than had been known under systems of slavery or serfdom. Men, women, and small children drudged through working lives of horror and degradation; lives by the thousands were maimed and crippled. Details of this nightmare can be read in any book of English history. Karl Marx, studying the period, saw the working of the dialectic in this creation of a proletariat of exploited wage slaves—workers who had nothing to lose but their chains. The factory system was born, but the suffering was unspeakable.

## BEGINNINGS OF UNIONISM

Out of the inchoate mass of factory workers, leaders inevitably appeared, and leaders always bring followers. Small and futile rebellions succeeded one another in continuous sequence. Employers, harassed by unscrupulous competition, suppressed these meager protests with harshness and violence. A brutal system bred brutes, and the value of human life fell to the level of the jungle. The law declared any unanimity among workers to be a punishable conspiracy, and countless little leaders were exiled to penal colonies or were hanged. Still new leaders arose, and the local rebellions flared.<sup>1</sup> Intelligent observers from the upper classes, men like Francis Place, Robert Owen, Charles Kingsley, and John Stuart Mill, saw all this and were disturbed. Through the efforts of such "intellectuals" as these, Parliament enacted a series of laws which were the forerunners of the present considerable body of legislation now governing the relations of employers and employees.<sup>2</sup> During the first half of the nineteenth century, trade unionism was legalized, and no longer could a man be sentenced to prison or death for belonging to one, let alone for leading one.

Turning to the United States, it must be remembered that the young republic inherited the traditions and the laws of England.<sup>3</sup> With few exceptions the suffrage was restricted to men of property who believed that the "artisan" class should be kept in subjection. On a smaller historical scale the English pattern was repeated in the United States. The first unions were transient

<sup>1</sup>History has forgotten the names of countless heroes who gave their lives in the early skirmishes of the long struggle for democracy in industrial relations. For their efforts they were condemned as common criminals, and the historians of the day were concerned chiefly with kings and generals.

<sup>2</sup>Instead of being contemptuous of "intellectuals," as many of them are, labor leaders should remember that the foundation stone upon which their structure of freedom has been erected was laid by liberal reformers of the "intellectual" class. The debt has never been repaid, but fortunately these great-minded men would never have asked or accepted repayment.

<sup>3</sup>For a brilliant and scholarly study of early American labor, see Richard B. Morris, *Government and Labor in Early America*.

organizations, created to achieve a particular immediate purpose such as a specific wage increase. Whether they succeeded or failed they were soon disbanded. All these early unions were local, being usually limited to the employees of one shop. Not until after 1840 were they generally held to be legal; therefore, the earlier ones were either secret or were disguised as fraternal societies.<sup>4</sup>

By the time of the Civil War, these scattered and transitory unions were attempting both extensiveness and permanence.<sup>5</sup> During the 1850's a number of national unions had been formed, including organizations of typographical workers, locomotive engineers, hat finishers, cigar makers, iron molders, blacksmiths, and machinists. All these survived the depression of 1857, but all were weak and essentially ineffective. They were still further weakened by the initial impact of the Civil War. The disruption of the labor movement by that war was temporary, however, since the war stimulated the growth of heavy industry and of railway transportation, an area of subsequent union activity. In a very real sense the war "made iron king" and paved the way for the rapid opening of the West. Railroad rails and wire fencing came into urgent demand. Newly risen industrialists, inexperienced in the operation of large business, sought to maintain themselves in the face of cutthroat competition by paying the lowest possible wages. As the years went on and the prospects of industrial expansion seemed inexhaustible, the supply of cheap American labor became wholly inadequate. Industry then turned to imported labor. Scouts were sent abroad. From the East they went to Central Europe and the Balkans; from the West to the congested areas of China. They went into the backwoods areas where people had heard nothing of unionism and where living standards were low. They described America as "the land of promise" where the streets were paved with gold and every man was wealthy. Transoceanic passage was arranged (to be paid for

<sup>4</sup> A summary of the legal history of unionism is found in the Historical Introduction to James M. Landis, *Cases on Labor Law*.

<sup>5</sup> Detailed history is readily available in John R. Commons and associates, *History of Labor in the United States*; S. Perlman, *History of Trade Unionism*; and H. A. Mills and R. E. Montgomery, *The Economics of Labor*, Vol. III, *Organized Labor*.

later out of the immigrant's wages) in the steerage—the lower hold of a ship designed to carry cattle *away* from the United States and immigrants *toward* it.

This extensive importation of labor brought millions of unskilled and uneducated people to the United States, which proudly called itself the “melting pot” of the world. But it also meant a plentiful supply of cheap and docile (that is, nonunion) labor to compete for jobs with the native American workers, whose standard of living was somewhat higher.

### THE LABOR ARISTOCRACY

During the last three decades of the nineteenth century, which was the period of the great influx of immigrant workers, the typical native American workers were of British or Western European ancestry. They spoke English and were fully versed in local customs and conventions. They had acquired at least some degree of skill, and, more important, they had been brought up in an atmosphere that encouraged independence of thought and courage in action. In the Yankee tradition, they refused to be “pushed around.” To a considerable extent their fathers had been part of the labor movements in England, Germany, or France, and unionism was not a strange thing to them. When industrial depression caused unemployment, those without jobs were aware of free land in the West to be had for the taking. In great waves, which the historians call the “Westward Movement,” they trekked as their predecessors had traversed the Appalachians into the Ohio and the Mississippi Valleys. Now they pushed into the plains, the Rockies, and to the Pacific. In so doing they removed a labor surplus from the industrial areas of the East. Workers who had not migrated but who had remained in the East were most apt to be those skilled artisans who enjoyed steady jobs. Now, being free of competition, their prestige and their wages were gradually elevated.

When business activity once more quickened, industry imported its common labor from abroad. A pronounced class distinction between the comparatively skilled and sophisticated American workers and the incomprehensible foreign laborers

grew inevitably. The American, forgetting the comparative recency of his Americanism, came to look with a certain amount of contempt upon the immigrant. Alien ways, language, and customs contributed to this, but alien willingness to accept low wages was a more powerful force. Many of the immigrants had no intention of remaining permanently in this country. They often left their families at home in the old country and remained only long enough to save up a few hundred or a thousand dollars so that they could return to the home village and live in comparative ease. They accepted the low wage scale because they didn't know how to do anything to raise it. They accepted a still lower standard of living and long working hours, and they lived in their own nationality groups with no attempt to mingle with the Americans. The resentment of the American worker flared into bitterness and sometimes into violence. In San Francisco, labor leaders were exceptionally active in the persecution of the Chinese.<sup>6</sup> In the Northeastern and Central states, the treatment of aliens was less often fatal to them and was less picturesque, but civilization still carries as an unhappy legacy of the times such epithets as "Hunky," "Wop," and "Kike."<sup>7</sup> These clearly symbolize the feeling of superiority which came to characterize the American workers. Indeed, after the turn of the century the American Federation of Labor found itself in the unusual position of supporting the Daughters of the American Revolution in their campaign for quota restrictions on immigration.

By 1890 there were two working classes in America. The native group of skilled workers was the aristocracy of labor; the foreigners were the *hoi polloi*. The distinction prevented the growth of working-class consciousness which had become so real in Europe and caused a long delay in the widespread acceptance of the Marxian concept of the class struggle which came to characterize several European nations. Further, it shaped the American labor movement for a half-century. Unionism quite naturally developed among the skilled craftsmen and quite as naturally

<sup>6</sup> For an interesting and authoritative account, see Ira B. Cross, *History of the Labor Movement in California*.

<sup>7</sup> About 1914, a sturdy American informed me that "none of them foreigners has got the sense a white man has, anyhow."

lagged among the immigrant workers.<sup>8</sup> Craftsmen cared most for the improvement of conditions in their crafts and felt no responsibility for helping the foreigners. The labor movement, at least until after the First World War, was fundamentally aristocratic in its membership and in its outlook. Only the drastically reduced flow of immigration which followed enactment of quota restrictions and of oriental exclusions could reduce the cleavage and make possible the beginnings of a feeling of working-class solidarity. But much yet remains of the traditional aristocratic attitude in some of the more skilled trades.

### THE EMPLOYER'S OWN BUSINESS

In the meantime, the position of the employers was rapidly changing. During the first half of the nineteenth century industries had, with few exceptions, been small and personal in their management. The device of the corporation was newly contrived and still cumbersome. Not until this legal but impersonal "person" had been fully developed, after the middle of the century, was it possible to accumulate the vast capital necessary to mass production on a large scale. Among the small firms competition was keen to the point of bitterness and often of violence. Each industrialist, failing to realize that cheap labor was often the most expensive labor, sought to pay the lowest possible wage rates.

With the great profits available during the period beginning with the latter part of the Civil War, however, competition became even more bitter, and industrialists turned to the "trust" as a solution. Success lay in an ability to manipulate both finance and politics, and the "captains of industry" became so engrossed in these that they could give scant thought to the welfare of their employees. Labor, hard-pressed in this turmoil, was driven to drastic tactics. Many followed Johann Most into the wilds of anarchism, but still more were attracted by the humanitarianism of Eugene V. Debs. Such working-class movements encouraged

<sup>8</sup> A graphic account of the difficulty of organizing immigrant workers is found in Morris Hillquit, *Loose Leaves from a Busy Life*.

the employers to band together against what they considered to be a common enemy—the so-called “labor agitator.” Trusts were formed to control the market; they were soon found to be effective in controlling labor.

The attitude of the typical businessman was bitterly antagonistic toward the growing unions. He sold his product in a highly competitive market where he was always in danger of being swallowed by the great trusts. Wages were the largest single item in his expense of doing business, and most other items were comparatively inflexible. In his judgment, then, it was essential that he retain full control over wage rates. A union, which challenged his absolutism, appeared to be a diabolical contrivance aimed at the heart of American enterprise. Accordingly, this typical businessman fought the growing unionism with the spirit of a righteous crusader. It was therefore with a feeling of performing an unpleasant but necessary duty that some of them arranged for the actual shooting of strikers.

History has demonstrated many times that mass movements thrive on oppression. Persecution of the unions served only to increase their strength. Since they had no legal protection, they were obliged to resort to direct economic action. Out of this head-on collision grew a generation of turbulence and violence in labor relations. It was from this background that the modern American labor movement and modern collective bargaining grew.

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## *Chapter 8*

### *AMERICAN LABOR UNIONISM*

#### TYPES OF UNIONISM

The forces and events of American history have produced a number of types of unionism. Although foreign influences are discernible in their development, the stream of American circumstances has determined the actual shape and philosophy of the domestic labor movement. It is unnecessary here to describe in detail the history of these movements, but it is requisite that a few historical forms and events be recounted if the contemporary labor movement is to be understood.

For purposes of exposition, a rough classification of the types of American unions is given in the following pages. It must be understood that none of the categories is a neat pigeonhole and that individual unions may occasionally fit into more than one category. The classification provides a list of points of emphasis rather than a series of mutually exclusive types. Unions, after all, are human institutions and are therefore as complex and changing as the human beings who comprise them. If this fact is understood and constantly borne in mind, the catalogue that follows will prove fruitful in attempting to understand what goes on today.

#### POLITICAL UNIONS

Off and on throughout American history, working-class leaders have experimented with a type of organization which served the union purpose of bargaining with employers and which also functioned in election years as a political party. "Political union-

ism" is too strong a term to be applied to any union which merely manifests political interests or which supports a major political party. To have meaning at all, it must be restricted to describe those unions which actually attempt to be political parties or at least to dominate them through formal organizational controls.

The first of these in American history, the Workingmen's party, was organized in Philadelphia in 1827. The idea spread rapidly, and during the ensuing several years such parties were formed in New York City, in upstate New York, and in Boston. In 1831 was organized the New England Association of Farmers, Mechanics, and Other Workmen, designed to serve both as an economic union and a political party. By 1834, however, all these organizations had disappeared, and in each case the reason was essentially the same. Being hopelessly defeated in politics, as each one was, the membership lost interest and the organization could no longer function as a union. As a party, its votes were virtually restricted to the union-minded workers, who were inevitably a minority of the electorate. Hence it failed as a party. As a union, its goals and purposes were tied to political action. When that failed, it failed as a union. Thousands of workers threw their hard-earned savings into these hopeless ventures and learned their lesson.

The human memory is short, however, and for several generations, at least, the lesson had to be learned anew by each generation. In 1866 the National Labor Union was formed. It dabbled in a wide variety of schemes, including producer's cooperation. After about five years of turbulent history it turned to politics and attempted to set itself up as a party. In the attempt it collapsed, as the attempts of the 1830's had collapsed, and by 1872 nothing remained. Labor parties have been proposed periodically ever since. A few, such as the Farmer-Labor party of the Northern Plains states and the American Labor party in New York were able to survive, to elect candidates, and especially to constitute a significant bloc. But these were not political unions. Rather, they sought the whole liberal vote, labor and otherwise, and were only nominally "labor."

One organization which for a number of years was a sort of

political union has managed to survive for three-quarters of a century, but it must be considered as an exception to all rules. This is the Socialist Labor party, founded in 1876-1877 and still in existence. It was the creation of socialists who sought to combine the activities of revolutionism, politics, and unionism in one organization. In its earliest years it was more properly a party than a union, designed primarily to educate the working population into the principles of socialism. Beginning in 1889, under the leadership of Daniel De Leon, it began the actual organization of subordinate unions, allying them to itself through a structural device known as the Socialist Trade and Labor Alliance. De Leon was doctrinaire and violently domineering and was vindictive toward any who differed with him on any point. He and his party exercised considerable influence for a decade, but in 1900 the anti-De Leonites, under the leadership of Morris Hillquit, seceded from the Socialist Labor party and formed the Socialist party of America. Since then both have continued in existence, but the former has remained ineffective and comparatively unknown. For nearly fifty years it has remained a loyal little band which is engaged largely in the sanctification of De Leon but which runs candidates for national office, including the Presidency of the United States, and polls only a few thousand votes, mostly in New York. At present it would not be proper to classify it as a political union but rather as a select fraternity dedicated to the adulation of a glorified Daniel De Leon. In this it succeeds admirably. Its years as a political union were the decade between 1890 and 1900, and in that capacity it failed completely and unequivocally.

### RADICAL UNIONISM

The Socialist Labor party, during its "union" period, was both political and radical. There are instances, however, of unions that are radical but not political. They were organized to further the overthrow of capitalism by economic rather than by political means. Earliest among these, in American history, was the Industrial Workers of the World (IWW), formed in 1905. The organizers were socialists who had become convinced that politi-

cal action was futile and who sought the achievement of the proletarian state by economic action alone.<sup>1</sup> Believing that the law is no more than a weapon of the capitalists and agreeing with Marx that government is actually "an executive committee of the ruling class," they sought neither political office nor favorable legislation.

According to their constitution, the particular variety of revolutionary doctrine adopted was syndicalism, in which the workers in each industry were to own that industry. National boundaries were to disappear, and the workers of all countries were to unite. Although the IWW was itself a giant union to which all workers could belong, it accepted the affiliation of such industrial unions as the Western Federation of Miners (metal mining). Although this brought into it certain inevitable trade-union functions, it remained primarily a revolutionary organization. It should be pointed out, however, that many of the members had never read the IWW constitution and neither did they know what the word "syndicalism" meant. Membership was drawn heavily from among the transient, homeless men who furnished the bulk of the labor in the forests of the Northwest, in the fields of California, and in the metal mines of the mountain states. Eventually it invaded the industrialized East, particularly the textile mills, but with less success. To most of these workers, it was sufficient to assure them that someday they should own the industries in which they worked. This promise led them to harass but not to destroy. They heckled and annoyed the employers but were usually careful to preserve the essential raw material and equipment of the industry.

Fundamentally, the IWW was a phenomenon that arose inevitably out of the Western tradition, a tradition of personal independence and direct action. The rejection of political activity went so far as to include the rejection of legal defense in court trials unless life was at stake. Individual "wobblies" ac-

<sup>1</sup> An exception must be noted. In the founding convention of the IWW, De Leon and his politically minded SLP affiliated. Internal quarrels regarding the desirability of political action followed, and in 1908 De Leon was expelled from membership. From then on, economic actionists like William Haywood dominated the conventions.

cepted jail sentences without objection and as a rule were model prisoners, whiling away the hours with the songs for which they became famous. Along with their picturesque (and often unprintable) songs, they developed an entire body of folklore. Joe Hill, a real wobbly who was shot by a firing squad at Utah State Prison, was built up into a semimythological hero who died for the working class in many of the songs. The IWW was abused and much misunderstood by the American public of its time, but its story is one of the most intriguing chapters in American history—a chapter that is full of pathos and humor, of tragedy and comedy. Although the organization went among the dispossessed drifters for its membership, it represented a dramatic insistence upon the dignity of the human individual.

Specific reasons for the decline and eclipse of the IWW include the difficulty of collecting dues from an itinerant membership and the relentless attack made upon it by both industry and government. These were the apparent reasons, but there must be a deeper reason back of them. If men believe in something sufficiently, they will not only support it but will be strengthened rather than weakened by persecution. It seems likely that the automobile had something to do with it. The rapid development of cheap motor transportation, coupled with an improvement in social work, assisted in the substitution of migrant families for migrant single men. The class of men who had been the backbone of the IWW did not disappear, but it was so reduced in number that the organization lost its essential strength. The Communists, who organized in the United States in 1919, attracted most of the more capable leadership from the IWW and thus dealt the latter its death blow. Its real decline began then, and at the present time only a few scattered shreds remain.

The Communists have conducted the second great experiment in radical unionism in this country. Although primarily a revolutionary party, the American Communist organization has on a number of occasions sought to operate labor unions which, although possessing undoubted political implications, were nevertheless designed to serve primarily economic functions and which were not, in their own names, engaged in direct political activity. When the party was first organized in 1919, it worked “under-

ground," coming out into the open in 1921 under the temporary name of Workers' party. During its first decade, its labor policy is best described in its own jargon term—"boring-from-within." This term covers a whole program, in which party workers joined existing unions, were elected (usually after hard and diligent work) to important union offices, and then sought to "capture" the union for the Communist party, that is, to induce the union to accept the ideology and tactics prescribed from party headquarters. This ideology required the capture of the labor movement, the argument running as follows. There is a class struggle which will continually increase in intensity until the proletarian revolution. The best method of bringing about this revolution, which will come about anyway, with the least resistance and violence is to build up a trained and militant leadership to guide the sluggish mass of workers.<sup>2</sup> In order to convert the leadership of unions into the leadership of the masses, Communists quite logically support industrial unions which admit the unskilled as well as the skilled into membership. Once the labor movement has been enlarged to include the entire proletariat and Communists lead the labor movement, the overthrow of capitalism is expected to be easy. They are not interested in winning a majority vote (their party is therefore not a party in the traditional American sense) or in bringing all workers into their membership. The party is composed of leaders; the nonparty people are supposed to follow. "Boring from within," therefore, did not involve any attempt to convert all workers to the party line. If the effective leadership could be attained, the union could be presumed to have been taken over. In the process of boring from within, of course, it was necessary to win the confidence of the rank and file by securing

<sup>2</sup> Communists characteristically assume an aristocratic viewpoint toward the sheeplike masses and have scant respect for the opinions of the "man on the street." They have good authority, of course, since Marx, in the *Communist Manifesto*, said that the Communists "have over the great mass of the proletariat the advantage of clearly understanding the line of march, the conditions, and the ultimate general results of the proletarian movement." He also refers to "the social scum, that passively rotting mass thrown off by the lowest layers of old society. . . ."

for them higher wages, shorter hours, and other bourgeois "sops." In this way, Communists found themselves engaged in routine and typical union activities. By following this procedure, Communists did succeed in gaining effective leadership in a number of locals and came within striking distance of capturing several great international unions. Conspicuous among the latter were the Furriers, the Ladies' Garment Workers, the Amalgamated Clothing Workers, and the Machinists. In no case did the party succeed in dominating both the policy and the membership of these unions, but they came close enough to bring about a bitter struggle with the anti-Communist faction, which eventually regained undoubted control. Indeed, the net result of the boring-from-within policy was to drive these unions further to the "right" than they had previously been, which is a conclusive demonstration of the fact that the Communist policy of the time, even from their own point of view, was completely incorrect. Probably more than any other one thing, boring-from-within turned liberals and Socialists away from any leanings they may have had toward communism and drove them into tactical alliance with the conservatives.

After a presumed recognition of the patent fact that boring-from-within had failed, the party leadership (headed by William Z. Foster) turned, in 1928-1929, to a different policy toward labor. This was "dual unionism," an old device which had been unsuccessfully attempted years before by De Leon. In 1928, the Communist groups within the Ladies' Garment Workers and the Furriers had formed an entirely new organization, the National Needle Trades Industrial Union. It was "dual" in that it was the second union to become available to the same group of workers. The idea was that the new union would compete for members with the old, established unions, eventually winning enough members to force the old organizations into nonexistence. No longer did they seek to capture the old unions; now they sought to attract the members away from the old unions. After about a year of experience with the Needle Trades Industrial Union, dual unionism became the official policy of the party, and organizational activities were undertaken in many industries, chiefly among the coal miners, the textile workers, and the

agricultural and cannery workers. The program was conspicuously more unsuccessful than the previous boring-from-within had been. Few workers joined, and fewer remained for long. Communist leadership was belligerent toward existing unions, Socialists, liberals, the *bourgeoisie*, capitalists, employers—in fact, toward everyone but themselves. It seemed as though the whole policy had been designed to repel, rather than attract, the majority of American workmen.<sup>3</sup>

Whether or not the dual-union program in the United States had been ordained from Moscow has not been officially revealed. However, there is some evidence to support the assumption that Moscow ordered its termination in 1935. Abruptly all the Communist unions were discontinued, and the tactic of can-tankerousness vanished at the same time. Sweetness and light became the theme; cooperativeness the method; and Lincoln the tradition of American Communism. It was all very sudden and to the uninitiated quite bewildering. Very soon, however, the explanation was seen in a renewed attempt at boring from within. This time the plan was to start high up, with the AFL itself. Conservative AFL leaders redoubled their vigilance, and the program made no headway. Immediately the party turned its attention to the newly formed CIO. In this organization were a number of large industrial unions made up, in the main, of hitherto unorganized workers. Organizers and local leaders were badly needed by the CIO, and Communists quickly filled the gaps. The top leadership, however, was careful to see that they occupied very few strategically important positions and, when their services were no longer needed, gradually weeded them out. As a result, the Communist successes in the CIO were largely temporary. There may still be Communists among the leaders of a few CIO unions, but they have failed completely to capture the CIO itself.

Whether or not the Communist unions in the United States would have been more successful had their leadership in this

<sup>3</sup> One Communist union leader of my acquaintance (1933) kept his "rank and file" in such a continuous strike that they all had to leave the industry and work elsewhere in order to eat.



country not been so totally inept is a speculative question to which no answer can be given. The fact is that it was inept and the program a failure. If, by chance, their philosophy is correct and a revolution is inevitable, they can take credit for having delayed it for at least a generation.

### THE "ONE-BIG-UNION" IDEA

To the historical leaders of the working class there has frequently occurred the idea that all workers, regardless of trade or industry, should be united into one great organization. Although this idea has appeared in the Communist philosophy, it has also been advanced by many individuals who were in no sense radical, but who, in a spirit of benevolent humanitarianism, sought in a single organization a means of raising the living standards of the majority of the people within the existing economic structure. So vast a concept inevitably has mystical qualities, and appeals most to a leader who has implicit confidence in the perfectibility of human nature. Such a person was Uriah Stephens, who in 1869 founded a society which was subsequently named the Noble Order of the Knights of Labor. Stephens and his colleagues (those in the original group were Philadelphia tailors) believed that the organization of workers by crafts was inducive of selfishness, and they wanted to bring all "toilers by hand or brain" into one great fraternity.<sup>4</sup> The order has been the only union in American history which has been built upon this principle of universal brotherhood and which has had any success. Others have dreamed of it, however, and the idea may be tried again.

<sup>4</sup> Some writers have classified the Knights of Labor under the heading of "reformist unions." This is correct in that the order was reformist in spirit. However, the term "reformist" has so many meanings that most unions could be so labeled, and I have therefore rejected its use as a major category. The order was more significant because of its aspiration for universality than for its interest in reform.

Although the rules required that at least three-fourths of the members of each local assembly be wage earners, the self-employed (with the exception of bankers, lawyers, saloonkeepers and professional gamblers) were eligible for membership.

In keeping with the design that the order should be fraternal, it was founded as a secret society. Although it grew slowly at first and was quite inconspicuous, the public (especially the press) learned of its existence and naturally wondered about its purpose. When a wave of labor terrorism, conducted by a mysterious group nicknamed the "Molly Maguires," swept the coal areas in and near western Pennsylvania in the mid-1870's, the secret order was unjustly blamed. When, in 1877, a few of the leaders of the great railroad strike of that year were identified as members of the order, an almost hysterical fear of and hatred for the society was aroused. In self-defense the organization was forced to come into the open and to publish its records and its rituals, which it did in 1878. Shortly thereafter, Stephens was succeeded by Terence V. Powderly as Grand Master Workman, who led the organization into more practical programs. For the next 7 or 8 years it functioned as a great union. Membership increased rapidly, reaching a peak somewhere above 600,000 in 1886. It engaged in collective bargaining and conducted successful strikes, the most conspicuous being on the Missouri Pacific Railway, in which the powerful Jay Gould was brought to terms.

Many of the scattered craft unions which had been formed here and there throughout the nation affiliated with the order, usually retaining their identity by being admitted as "assemblies." Mixed assemblies, however, to which workers were admitted without regard to craft, became much larger in membership although they remained fewer in number. In this way the order enabled the craft groups to seek their own welfare (the practice which Stephens had condemned as "selfishness") and at the same time provided a device for organizing the great mass of unskilled workers and those others who did not fit into the craft unions. Spectacular success in the early 1880's pushed the order into a prominent position on the national scene. Just as spectacularly the bubble burst. After 1886 the membership declined at a progressively increasing rate, dropping from the peak of over 600,000 to less than 100,000 in 1890. By 1900 there was nothing left but a name, a dingy office, and a pitiful handful of members. A quick glance at the causes of this collapse will provide a lesson in the first principles of unionism.

The order suffered from a number of internal ailments. The first to appear historically, and perhaps the first in importance, was the confused and contradictory array of motives and principles which it was supposed to serve. As a benevolent society, it abhorred strikes, but as a union, it was obliged to win for its members or go out of business. It was designed to be democratic, but it grew so unwieldy and cumbersome that internal democracy ceased to function. Given these two facts, a third became inevitable: It never knew what to do next. Top policy was now firm and now vacillating; at all times it was wholly unpredictable. There was never any clear-cut concept of its purposes, either temporary or long range.

Its own rapid growth in an age of poor communication became a handicap rather than an asset. Ultimate power was centered at the headquarters in Philadelphia where there was little or no understanding of the daily problems arising in San Francisco, Seattle, or New Orleans. Little local rebellions therefore became more frequent as time went on. Meanwhile the mixed assemblies grew to be overloaded with workers who were not only unskilled but ignorant and inexperienced, and craft assemblies found little or nothing in common with them. Quickly the order became a vast amorphous mass, bloated with members but unable to organize itself into a workable structure. Perhaps the crowning blow was the Haymarket incident at Chicago in 1886, when several alleged anarchists, on trial for exploding a bomb, were discovered to have membership cards in the order.<sup>5</sup> This incident let loose a flood of abuse and persecution from both industry and government, both of which had been becoming increasingly apprehensive about the rapidly growing power of the Knights of Labor. Thousands of members who did not want to be linked with the alleged anarchists let their memberships lapse. By the time Governor John P. Altgeld had exposed the corrupt nature of the trial at which the defendants had been convicted and historians had established the fact that none of them could have

<sup>5</sup> For a brief résumé of the Haymarket affair, see any history of labor in the United States. For an authoritative and detailed account, see Henry David, *The History of the Haymarket Affair*.

been connected with the throwing of the bomb, it was too late for the Knights. Their strength was gone, and a new labor organization, the American Federation of Labor, had taken the center of the labor stage.

## BUSINESS UNIONISM

During the preceding discussion of various types of unionism, reference was occasionally made to the "economic" functions of unions, as contrasted with political, reform, or revolutionary functions. The greater number of contemporary American unions are primarily economic in function and assume the indefinitely continuing existence of a system of private enterprise. The reason why the currently dominant type of American unionism may properly be called "business unionism" will emerge from the following discussion of its origin and development.

As has been pointed out before, workers of the first three-quarters of the nineteenth century experimented with producer's cooperation and politics as well as with various sorts of uncompromising radicalism. In each case, unionism proved to be a failure. As a result, an increasing number of workers began to realize that partisan action, at least, was fatal. Among these was a small group of cigar makers employed in New York City, one of whom was a young immigrant (from England) named Samuel Gompers.<sup>6</sup> These cigar makers, having little to occupy their minds while at work, took turns reading to each other. They studied Karl Marx and read widely in politics and economics. Gradually they reached the conclusion that the only way in which a union could succeed was to restrict its activities to the purely economic field and to concentrate upon improving the conditions of the job.<sup>7</sup> Although they did at the time consider themselves as socialists, they became convinced that political socialism could not succeed and that the first and

<sup>6</sup> For details, see Samuel Gompers, *Seventy Years of Life and Labor*, and Lewis Lorwin, *The American Federation of Labor*.

<sup>7</sup> The evolution of this conclusion is presented at length in Selig Perlman, *History of Trade Unionism in the United States*, and competently summarized in H. A. Mills and R. E. Montgomery, *Organized Labor*.

longest step toward the millennium was the creation of a strong body of trade unions. To be strong, the unions must not dilute their energies by deviating from the path of straight economic action. As time went on, bitter attacks upon Gompers by De Leon forced Gompers further to the right until he not only abandoned his earlier socialism but became determinedly anti-socialist.

It should be remembered that, as pointed out in Chap. 7, there was no homogeneous working class in the United States in the 1870's. The skilled and native workers considered themselves above the mass of unskilled immigrants. Class consciousness in the Marxian sense was impossible. Further, the typical skilled worker lived in hope that he or his children might be elevated into employer or professional circles. He firmly believed that any boy, no matter how poor at birth, might eventually reside in the White House. In the immediate background were his memories that Lincoln, Johnson, and Grant had all been born poor and had all achieved the Presidency. Others who had started life as wage earners were now heading great industries. All this was wholly unlike Europe where there were rigid class lines over which one could not pass. The class consciousness of European labor was the natural and inevitable concomitant of class rigidity. In America, where the rigidity was lacking, class consciousness had failed to appear.<sup>8</sup> Each man's hope of elevating himself led him to be concerned with higher wages, and he saw social revolution to be as much an interference with his ultimate "success" as did any capitalist. He was not concerned with pay envelopes in general, but with his own pay envelope. A cigar maker in New York could feel nothing in common with a poor Polish iron puddler in Pittsburgh, but he did see that united action with his fellow New York cigar makers might secure a wage increase for himself. With a wage increase he might be able to set himself up as the proprietor of his own cigar factory. It

<sup>8</sup> It is possible that classes in America were more rigid than was popularly believed. Certainly a climb from the bottom to the top was the exception rather than the rule. However, what people believed at the time was more important in determining the conventions of the time than any recent and retrospective judgment.

is this which has been called the "job consciousness" (as opposed to "class consciousness") of the American workers. Many people had been dimly aware of this situation, but it was Gompers and his friends who really discovered it, described it, and acted upon it. Upon this foundation they built the American labor movement.<sup>9</sup> Unions uniting the practitioners of the craft were the basis of this movement, and each union was concerned primarily with the conditions of the job. In a very real sense, each union was to engage in effectuating the sale of the labor of its members and was concerned with getting the highest price possible in the transaction. It is this resemblance to the conduct of business enterprise which gave to Gompers' unions the name of "business unions."

### VOLUNTARISM

Upon the basis of job consciousness, Gompers built a policy which, in his speeches and writings, he called "voluntarism." It was the jealously preserved policy of the American labor movement for 50 years, and much remains of it to this day. As a policy it lacks in philosophical depth, but it has ranked high in practical effectiveness. It may be simply stated in the following series of propositions. Society is composed of many contending groups, each of which best understands its own interests. Labor is such a group, and within it are many smaller groups. The self-interest of each of the smaller groups is best judged by that group. Power should therefore be vested in the local union rather than be handed down from above. Government, which is potentially the supreme temporal power, should not interfere with the affairs of labor because it cannot understand the problems that labor faces. Further, interference by government hampers personal rights and destroys personal initiative.

Just as labor groups understand their own self-interest, so also do employers. Government should not interfere with them either.

<sup>9</sup> In the 1920's (Gompers lived until 1924), many liberals took pleasure in deriding Gompers and in minimizing the value of his work. I think it cannot be denied, however, that for his own times, at least, Gompers was absolutely correct. The best proof is that his organization survived while all others failed.

Each local employer, by dealing with the local union, can arrive at solutions of their mutual problems better than can be done by any superior authority.

One of the principal corollaries of voluntarism is "local home rule" in the labor movement. The AFL, which Gompers led for nearly 40 years, was built upon the proposition that final power should rest in the hands of the local union. Locals are the first to be organized. When there are several locals composed of workers in the same trade, they band together into a national or international union.<sup>10</sup> These latter then organize into a loose federation which serves the common interest of all. National officers are elected by conventions, the delegates to which are elected by the locals. The locals therefore have the power to elect and to remove all officers, but top officers do not have the power to appoint or remove local officers. The AFL was designed to serve the constituent unions in the same way that the Articles of Confederation were supposed to serve the American states prior to the adoption of the Constitution. The unions retained their full autonomy and united into a national federation only for the expedient purpose of showing a united front against a common enemy. Gompers characterized the federation as "a rope of sand," and undoubtedly he didn't want it to have any more tensile strength than such a rope would have.

Another principal corollary is the maintenance of a labor aristocracy. Voluntarism meant "self-help," which in turn meant that groups of skilled workers were more likely to organize into local unions than were the uncongealed masses of the unskilled. Further, since the organized crafts were chiefly interested in themselves, they would give little thought and less money to help in the organization of the unskilled. Since there was no feeling of solidarity, no class consciousness, among the American working people, this aristocratic exclusiveness was a source of strength to the craft unions. The workers were too heterogeneous for any but craft unions, as had been demonstrated by the experience of the Knights of Labor. "Self-help" is a doctrine which is most useful to those who already possess comparative

<sup>10</sup> "International unions," in American labor parlance, mean those unions which have locals in Canada.

security. This is not to say that the American labor unions of the 1890's were secure (they weren't), but the skilled workers were much more secure than the unskilled immigrant laborers. Being conscious of this superiority, they were individualists rather than collectivists.

### THE AMERICAN FEDERATION OF LABOR

As Gompers and his associates were engaged in formulating this doctrine of voluntarism, they were seeing about them the repeated failure of the other forms of unionism which were being tried. They were themselves members of the Knights of Labor, but as craftsmen were more interested in their crafts. In 1881, a number of craft unions joined together in the Federation of Organized Trades and Labor Unions of the United States and Canada. This complexly named organization met with little success for some years, and even, in some discouragement, made overtures to the Knights of Labor, which, in the strength of numerical greatness, rejected them. In 1886 the craft organization merged with other trade unions under the name of the American Federation of Labor. This was the same year in which the Knights began their rapid decline, and the corresponding success of the federation convinced Gompers of the correctness of voluntarism. By 1890 the AFL philosophy, as spoken by Gompers, was virtually complete, and the organization was taking form accordingly.

The financial panic of 1893 and the troubled years that followed put "pure and simple" unionism to a severe test, and although it did not surmount its troubles with glory, it at least survived. By "digging in on the economic front" the unions held on to sufficient membership to permit their continued existence. "Digging in" meant the pursuance of various devices to hold the workers' interest in the union: death and funeral benefits, insurance schemes, and sometimes the carrying of unemployed members with reduced or even remitted dues. The union sought to make itself essential and inexpensive to its members.<sup>11</sup> With

<sup>11</sup> Gompers frequently quoted, with approval, a sentence of his friend Laurell: "If it doesn't square with your due book, have none of it."



control at the local level, members were not subjected to financial assessments levied by unknown bigwigs of a remote hierarchy. By dealing locally with individual employers, they were able to work out mutually satisfactory ways to weather the economic storm.

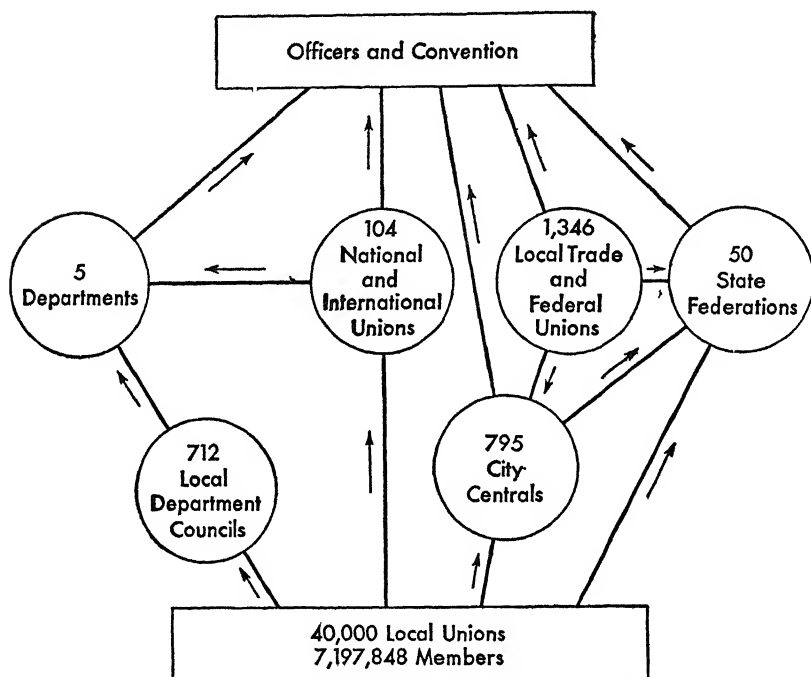
Observation of the Pullman strike in 1896 convinced Gompers of the grave danger in big strikes. Too much was staked on one cast of the die, and the power of the government was too strong. This further convinced the AFL leadership of the importance of concentrating on local action. At the same time, the anti-labor injunctions secured by the government in that strike hinted at the first weakness in the doctrine of voluntarism. The courts were on the side of the employer, and labor would have to enter politics if protective statutes were to be passed. Gompers persisted, however, in nonpartisan political action. "Reward your friends and punish your enemies," he said.

Meanwhile the federation grew into a loose and rambling structure. Being built upward from the locals and designed primarily to serve local needs, it was necessarily flexible in shape. Locals were members of international unions, which in turn were members of the AFL. Locals also banded together to form city central councils, and these were also chartered by the AFL. The need to function together on a state-wide basis brought about the creation of state federations of labor, composed of local unions and city councils, and the AFL includes these state federations in its membership. Reference to the diagram on page 164 will make these relationships clearer.

It was early discovered that small groups of workers, especially in trades not hitherto unionized, could organize locals but were not always sufficiently numerous to unite into internationals. To provide for the affiliation of these groups, the federation chartered "federal unions," which are locals holding membership directly in the AFL without intermediate membership in internationals. These are also affiliated with city centrals and with state federations.

Jurisdictional disputes between member unions arose in the first years of the federation. In an effort to provide means for settling these amicably, craft unions in the same industry have

been organized into departments. The nonoperating Railway Employees' Department was organized in 1909, and the following additional departments are now functioning: Metal Trades, Building and Construction Trades, and Union Label. These departments are members of the federation and, in turn, are made



Organizational chart of the American Federation of Labor. (Data for summer, 1948, from the American Federation of Labor.)

up of local department councils, to which the local unions of the affiliated trades belong.

Local unions elect delegates to city centrals, city councils, and state federations as well as to their internationals. Internationals, city councils, departments, and state federations elect delegates to the conventions of the AFL. These annual conventions are the actual governing body of the federation and elect the executive officers. During the months intervening between conventions, the officers and executive council exercise authority.

## THE DECLINE OF VOLUNTARISM

As the years have gone by, especially since the death of Gompers in 1924, voluntarism has been gradually modified, and local autonomy has been limited. Several powerful forces have brought about this gradual change. The modification in the attitude toward political and legislative action has already been mentioned, but certain economic forces which were at work should be explained here.

At the time when voluntarism was formulated as a doctrine, craft lines were reasonably distinct and well understood. Consider Gompers' own union, the Cigar makers. Cigars, chewing tobacco, and pipe tobacco were the three forms in which virtually all tobacco was purchased by the public. In the three forms, the process of manufacture differed widely, and hand labor predominated in each. Of the three, cigar making required the greatest skill and the greatest amount of labor for each unit of product. A cigar maker did exactly as his title indicated—he made cigars. Today there are very few real cigar makers left in the United States. All but a very few of the cigars marketed are made by machinery, and the workers are really machine tenders. In the meantime, the cigarette industry has arisen and far outstripped cigar manufacture. The making of cigarettes has long been mechanized, and there never has been a craft of "cigarette makers" comparable to the cigar makers. Now they are all "tobacco workers," and most of them are machine tenders. The old craft has virtually disappeared. In many other industries, as well as in tobacco, the old crafts have either been eliminated or weakened by technological change.

Coupled with the increased blurring of craft lines came the growth in the size of industrial establishments. Not only did they get larger, but they also increased the variety of their product. This resulted in a greater number of craft unions claiming jurisdiction over diverse small groups of workers employed in each establishment. Individual employers found themselves dealing with as many as 20 or more separate craft unions. Other employers found craft unions with which they had never dealt

claiming jurisdiction over some of the employees who were already members of another union. One of the oldest and most persistent of these jurisdictional battles has been the one between the Brewery Workers and the Teamsters. From its earliest days, the Brewery Workers' union has claimed the privilege of representing all wage earners employed in or around a brewery. This naturally included the drivers of brewery wagons. Since, however, it was customary for breweries to maintain the finest draft horses in town and since there were often other advantages enjoyed by the drivers of brewery wagons, these jobs were considered unusually desirable by teamsters. The Teamsters' union soon claimed that, since teamsters are teamsters whether employed by breweries or by anyone else, the drivers of brewery wagons should be members of their organization. Eventually horse-drawn wagons gave way to motor trucks, but the Teamsters' union adjusted itself to include the truck drivers. Accordingly the jurisdictional dispute was not ended but has gone on intermittently ever since and still continues.

Still other disputes have arisen over changing industrial techniques. For example, when metal-framed windows were developed, metal workers insisted that since window frames were metal the right to install them was within the jurisdiction of their union. The carpenters objected, pointing out that the installation of windows had always been, and therefore should always be, the job of carpenters, no matter what the windows were made of. There have been thousands of interunion disputes created by similar changes in production methods. They have been complicated by the variety of local customs and practices and by the fact that employers who have something to gain by the practice have sometimes maneuvered one union against the other to the discredit of both.

All these elements of change in the national economy, taken together, have been a persistent source of weakness in the labor movement. Turmoil and internecine warfare have been consequences of voluntarism which have grown steadily in their critical importance. The federation has sought to minimize this difficulty by establishing procedures for conciliating jurisdictional disputes. The departments were created chiefly for this purpose.

Unions that are not members of any of the departments are expected to submit their disputes to the executive council of the federation, which attempts to work out a solution. This has produced a tendency to concentrate more power and authority at the higher levels. Locals cannot work out jurisdictional quarrels on a purely local basis, and they have turned to the internationals for help and guidance. The latter have frequently been obliged to turn to the high leadership of the AFL, and the seat of power has thus moved perceptibly upward.

Of an entirely different sort has been the partial breakdown of voluntarism as a result of the degradation of leadership which came so easily under the guise of local autonomy. On the whole, union leadership in the United States has been good. There are several hundred thousand union officials in the country, and in capacity and integrity they probably represent a fair cross section of the population. However, voluntarism enabled racketeers to gain a real advantage. In many local unions the membership is not well educated and cannot read the account books. In others, the members are apathetic, attend few meetings, and seldom insist upon a convention of the international. In still other instances, as, for example, among merchant seamen and bus drivers, the nature of the work spreads the membership over great areas so that few members can attend any single meeting, even of the local. In any of these instances, the union officials are apt to find themselves running the affairs of the local according to their own personal judgment and with no serious check from the membership. A greedy and unscrupulous official will find this power to be most convenient for his personal advantage. Since such people do occasionally work their way into union office, too frequent petty racketeering and sometimes great scandal have resulted. Under Gompers' doctrine, local officials were elected by, and solely responsible to, the local union. Neither AFL nor international officers had the authority to remove local officials from their offices. A number of unsavory cases of grafters in office sometimes made it necessary for the international officers to gather more power into their own hands in order to protect both the reputation and the strength of the union.

Gompers himself found it necessary to manipulate his own policy of voluntarism. He firmly believed in his own capacity for leadership and that his enemies, if they got in power, would wreck the labor movement which he had worked so hard to build. When, in 1894, he discovered that he had not been reelected to the presidency of the AFL, he decided to build a political machine within the organization in order to ensure his continuity in office. The machine, improved and strengthened, is still functioning with great effectiveness. It was originally built around the organizers who are appointed by the president and hold office at his pleasure. Many locals, requiring assistance, financial or otherwise, from these organizers, can be brought under the influence of the president and his hierarchy. Out of this has grown not an invisible but a semivisible government within the AFL. It gives the president and executive council a real control over the convention and through it the constituent unions. The high officers of many of the internationals have created similar systems of self-perpetuation so that now the whole structure of the federation includes two cross currents of power—one starting with the locals and spreading upward and the other starting with the high officials and filtering down. Thus far these currents have continued to cross each other with surprisingly little confusion.

The most recent blow to local autonomy in unionism has been the spread of industry-wide collective bargaining. As industries have expanded geographically, establishing branch plants here and there throughout the country, local unions have found themselves incapable of bargaining with the employer, especially when the management controls its labor policy for all branches from a central office. In order to bargain at all, unions have been forced to be represented by regional or national officers. No single small local can bargain as effectively with the General Motors Company as can the United Auto Workers. This has led unions to place a greater emphasis upon uniformity in negotiations and upon centralized representation in the bargaining process. This, the most recent, is probably the biggest blow to voluntarism that has occurred. It means that, in its fundamental function of bargaining, the local group neither knows what is best for itself

nor can achieve it. Of course, this has not happened to all unions. Those which deal with small employers can usually deal on a local basis. Big business, however, destroys local union autonomy wherever it spreads.

### CRAFT VERSUS INDUSTRIAL UNIONISM

With dogged determination the AFL held to the essence of voluntarism for 50 years. At first it prospered on that principle, and during those years the principle of local autonomy became firmly embedded in the thinking of labor leaders. The majority of the unions in the AFL were organized on a craft, or horizontal, basis. That is to say, they were unions of the practitioners of a particular trade or craft, regardless of the industry in which they were employed. The Carpenters' union claimed jurisdiction over all carpenters, whether employed in building construction, in erecting the timbers in mines, in the maintenance of breweries or oil refineries, or anywhere else. And so with all of the other craft organizations. Within the AFL, however, were a few unions, such as those of workers in the mining, clothing, textile, and brewing industries, which were not organized on a craft basis. The United Mine Workers, to take an example, was (and is) organized on an industrial, or vertical, basis. In such a union, jurisdiction is claimed over all wage earners who work in or around a coal mine, whether they be miners, carpenters, truck drivers, electricians, or followers of any other craft.

In many instances, the craft form of organization is highly advantageous, especially from a strategic point of view. The Teamsters' union, for example, includes in its membership the drivers of trucks in practically all industries. American business is completely dependent upon truck transportation. The "over-the-road," or intercity, truck service is only a small part of this but provides the only freight service to any locality not directly on a railroad line. Even where there is railroad service, without trucks no freight can be moved more than a few feet away from the railroad right of way. Retailers cannot receive the goods that they sell without trucks. In brief, practically all industry and business stops when the trucks cease rolling. This fact indi-

cates that the Teamsters' union is in an unusually strong bargaining position, far stronger than if the truck drivers were scattered among a variety of industrial unions.

On the other hand, there are many instances in which the industrial form of union organization has superior strength. Coal mines, for example, are apt to be located in relatively isolated areas. If, in a remote mine, each craft worker were in a separate union, the workers would be so divided among themselves that their bargaining power would likely be very slight. And in the great mass-production industries the craft unions are at a hopeless disadvantage. In a large automobile factory, it would probably require at least a hundred local unions to organize all the employees on a craft basis. As a result, there would be no unity or harmony of action. Their purposes are better served by a union that embraces all the crafts employed in the plant. Only such a union can represent the great number of semi-skilled workers who make up the majority of the employees of any mass-production industry.

Thus there are circumstances in which the craft type of organization is the most advantageous, and there are others where the industrial type is clearly superior. In between are many borderline cases. In some of these cases, multiple-craft unions such as the International Ladies' Garment Workers and the Amalgamated Clothing Workers have succeeded in securing the best advantages of both types. Although the AFL found room for all these types, ranging from straight craft unions through the multiple-craft to the straight industrial type, the true craft unions were in the majority. Prior to 1930 they included approximately three-fourths of all the union members in the nation. Since they crossed all industrial lines, they became jealous lest new industrial unions encroach upon their traditional jurisdiction.

During the decade immediately following the First World War, employers made a concerted attack upon unionism. This fact, coupled with postwar unemployment, reduced union membership in the United States by nearly a million and a half. Attempted organizing campaigns were generally unsuccessful, and many labor leaders began a desperate search for ways and means



of strengthening their organizations. The vast capital and skillful techniques of the rapidly growing postwar industries were recognized as factors against which the autonomous craft locals appeared as but puny combatants. Leaders of the larger industrial unions in the AFL began to urge the formation of new vertical unions in the great mass-production industries, most of which had never known a labor organization.<sup>12</sup> Steel had been nonunion since the unsuccessful strike of 1919; automobiles, rubber tires, and petroleum had never been unionized. There were vast areas in which to organize, and the protagonists of industrial unionism were convinced that the craft device could never succeed in organizing them. Craft union leaders, however, quite naturally viewed the organizing problem from the standpoint of their own organizations, which faced the possibility of dismemberment if the industrial union program were really successful. Since they constituted the majority in both the convention and the executive council of the AFL, they were able to prevent any serious encouragement to a program of industrial organization. In order to placate the advocates of the latter, they approved the creation of additional federal unions (organized on a plant-wide basis, and directly chartered by the federation), but with the proviso that, once such unions were well established, they would be divided up among the relevant craft unions. This device met with such insignificant success that the advocates of industrial unionism were not appeased.

In 1933, the National Industrial Recovery Act was enacted, and under it workers became legally entitled to representatives of their own choosing. This provided a genuine stimulus to union organizing, but the AFL craft unions, entering into a great campaign, ran head-on into the confusions engendered by jurisdictional conflict. In 1935, the leaders of the industrial unions, most of whom were vice-presidents of the federation, united themselves into an informal "Committee for Industrial Organiza-

<sup>12</sup> Prominent in this movement were John L. Lewis, President of the United Mine Workers of America, Sidney Hillman, President of the Amalgamated Clothing Workers of America, David Dubinsky, President of the International Ladies' Garment Workers, and Charles P. Howard, President of the International Typographical Union.

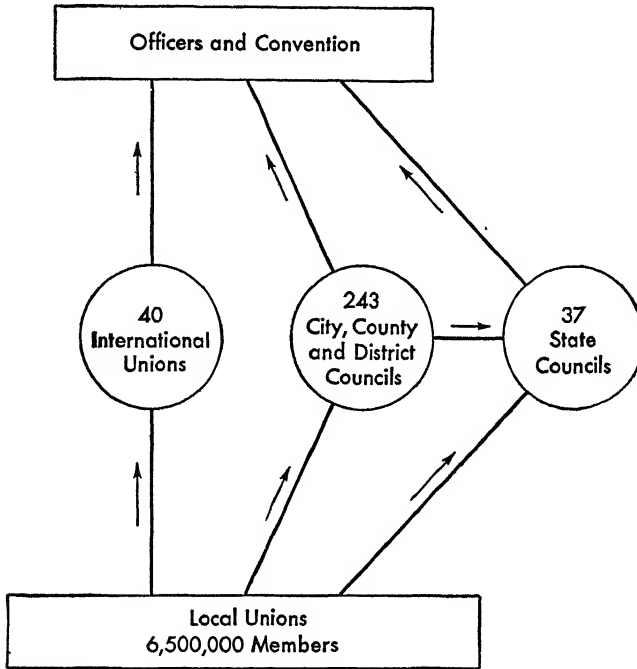
tion," created to further the cause within the federation. When this committee was disciplined by the executive council of the AFL, they and the unions they represented withdrew, and after some months set themselves up as a rival federation, eventually adopting the name "Congress of Industrial Organizations."

### THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

The leaders of the new federation, headed by John L. Lewis, its first president, had learned their leadership under Gompers in the ranks of the AFL. It was inevitable that, with the exception of their emphasis upon the industrial type of union, the general structure and principles which they carried forward were those of the AFL. Fundamentally, CIO unions are business unions, concerned with wages, hours, and working conditions. As far as was compatible with the large size of industrial locals, deference was paid to the principle of local autonomy.

With remarkable energy the CIO swept into tremendous organizing campaigns in those mass-production industries in which the AFL had been conspicuously unsuccessful. The results were brilliant, especially in the automobile, steel, and rubber industries. Indeed, the growth of the CIO was so spectacularly rapid that skeptics forecast another "burst bubble" similar to the Knights of Labor. The skeptics were wrong because the new unions, unlike the Knights, were solidly organized and pursued definite goals and because they were properly adapted to the vast heavy industries in which craft distinctions were comparatively insignificant. However, unions cannot survive if frozen into static form, and in their essential vitality the new unions were frequently led to compromise with the industrial form of organization. Just as industrial unions had remained in the AFL, the CIO soon found itself with semicraft or multiple-craft unions within its structure. It was important that the CIO leaders had been trained in the traditional doctrines of Gompers and the AFL. Gradually the structural difference between the two rival federations began to lessen. As is shown in the diagram on page 173, the organizational charts of the two are remarkably similar.

Deeper than that, however, both were dominated by the spirit of business unionism. Jurisdictional disputes between the two diminished as traditional areas of jurisdiction came to be ac-



Organizational chart of the Congress of Industrial Organizations. (Data for summer, 1948, from the Congress of Industrial Organizations.)

cepted. Finally, attacks upon traditional union activities such as are represented by the provisions of the Labor Management Relations Act of 1947,<sup>13</sup> forced the two to cooperate against a common danger.

### INDEPENDENT UNIONS

Since the founding of the American Federation of Labor, there have always been some unions which have not affiliated with it or any other federated body. Others have joined and later with-

<sup>13</sup> The so-called Taft-Hartley Act, June 23, 1947.

drawn or been expelled. Accordingly, there exist a number of so-called "independent" unions.

Most notable among the independents are the "operating" brotherhoods on the railways. The railway shop crafts are organized into unions affiliated with the AFL, but the train crews have remained outside the federation. The latter are organized into the major brotherhoods of locomotive engineers, firemen and enginemen, conductors, and trainmen, as well as a number of smaller groups. In structure and function they are not greatly different from the typical AFL international union. On several occasions in their history they have given consideration to the possibility of joining the federation but have remained out on the ground that the work of their members, as well as the federal legislation, were sufficiently unlike those of other workers so that there were few interests in common. Ordinarily, however, they have cooperated with the federated unions in an informal fashion. Several of the operating Brotherhoods have worked closely with the AFL railway shop craft unions through an organization known as the Railway Labor Executives Conference, which thereby overlaps AFL and independent unions.

The Brewery Workers, for many years in the AFL, withdrew as a result of the jurisdictional conflict with the Teamsters and for some time continued to operate as an independent. The Machinists have done likewise. For several years in the early 1940's the United Mine Workers, having withdrawn from the CIO, remained independent, then affiliated with the AFL, and in 1947 became independent once more. There are numerous other instances in which unions have experienced a temporary state of independence from affiliation, usually resulting from a transitory controversy with the federation concerned.

In 1945, an attempt was made to attract the independents into a new federation, the Confederated Unions of America. Thus far the attempt has met with small success. Unions that are inclined to throw in their lot with the rest of the labor movement are most likely to choose either the AFL or the CIO, and a third federation has small chance of accomplishment.

In both organization and purpose, the independent unions are generally of the same type as the affiliated organizations. With

no notable exceptions they are business unions, their independence being the result of special circumstances rather than of fundamental differences.

### COMPANY UNIONS

A "company union" is one which is made up of the employees of a single firm or association of firms and which is under the effective control of the employer. Nearly always, company unions are independent, but on rare occasions and where the control is subtle and hidden, they are locals of "regular" or "outside" unions. Until the enactment of the National Labor Relations Act of 1935, company unions were legal and ordinarily made no attempt to hide the fact of employer domination. During the First World War they were widely established, usually under the name of "employee representation plans." These were directly sponsored by the employer, the small expenses were borne by the company treasury, and meetings were held on company time. The organization was designed to provide a means whereby grievances could be brought to the attention of management, but the latter always retained full power to make final determination of all questions which might arise. Employers also found them to be useful devices in forestalling the organization of bona fide unions. An ill-informed worker was attracted by a "union" in which there were no dues and no evening meetings; he failed to realize that it gave him no bargaining power whatever and no rights which the employer did not magnanimously choose to grant him. Apparently he did not realize that a union created by the employer could be destroyed by the employer.

It should not be inferred that all company unions were anti-union devices. In many instances, especially those in which the regular labor movement had failed to organize, they served a very useful purpose, being (at the least) better than nothing. They did successfully handle countless thousands of grievances, and they did provide many "welfare" benefits to workers. But nowhere did a company union achieve genuine bargaining relationships with an employer, and nowhere could it be certain that it was not merely an antiunion tool.

## UNION AUXILIARIES

Attached to the majority of American unions is a variety of so-called auxiliary organizations. The most simple and natural form is the organization of the wives of union men in a particular local. Very often the ostensible purpose is social, that is, to provide a vehicle for conduct of picnics, card parties, dances, and other social activities. In time of strike, the women's auxiliary might be called upon to prepare food and coffee for the members of the picket line or for unfortunate families. Another, and perhaps deeper, purpose is to draw the interests and enthusiasms of the wives into the sphere of union purpose. It is usually difficult for a man to remain loyal to the union and to continue on strike if his wife is unsympathetic and is concerned chiefly with the temporary cessation of wages. The auxiliary, then, is a device to "educate" the wives, to give them understanding, and to induce their support and interest.

At times the idea of an auxiliary group has been perverted into less justifiable forms. In a number of cases, women who were not merely attached to the labor movement by marriage but who were actually working in the shop on genuine jobs have been segregated into an "auxiliary union." In this sort of "subunion," they invariably have the privilege of paying dues but often are not permitted to vote. The men justify this segregation on the ground that the women are likely to be only temporarily in the industry and hence should not take part in the determination of long-run policies. In practice this argument is incorrect since an industry, once open to women, normally continues to employ them. Also, women justly resent the patronizing spirit which places them on an inferior level.

Still another form of auxiliary arises out of the natural snobishness of human nature—that designed for Negroes, orientals, and other minority racial groups. A number of unions, for example, have prohibited the admission of Negroes to full membership. When they are employed in the industry, therefore, they are segregated into auxiliary locals, and again they pay dues but seldom vote. The long-run error of this device is apparent to

anyone who remembers that the function of a union is primarily politico-economic rather than social and who recalls that "in union there is strength."

### NONUNION LABOR ORGANIZATIONS

There are many societies and organizations that exist as appendages to the composite of labor unions. They are *in* the labor movement but, strictly speaking, not *of* it. For example, there are a number of "labor schools" for trade unionists, not operated directly by unions but receiving support therefrom. Many of these schools have banded together into the American Labor Education Service which coordinates the activities of its members. They are frankly concerned with the training of potential union leaders in the history, strategy, and techniques of their calling. There also exists the Association of Catholic Trade Unionists, which is not in itself a union but is a semi-religious educational society composed of Roman Catholics who are members of regular unions. In addition, there have been numerous transitory organizations on the fringe of the labor movement.

Although these nonunion organizations have never represented a large membership, they have exerted a marked influence on the growth of unions, chiefly as a result of their educational influence upon union leaders.

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## Chapter 9

### EMPLOYERS AND UNIONS

#### THE EMPLOYER'S VIEW OF UNIONISM

Numerous writers have sought to classify employers, in their attitude toward unions, as ranging from "friendly" to "belligerent." At a given time it may perhaps be possible to characterize specific employers in this fashion, but the process of doing so results in little of significance because, fundamentally, every employer is both potentially friendly to unions and potentially belligerent toward them. The friendly attitude will prevail as long as the union policy is not contrary to his own. At other times he is, in one form or another, belligerent.

There is an old myth that employers and employees are "partners in industry," that their interests are identical, and that what benefits the employer will automatically benefit the employee. This is fine sounding, but although specious it is unreal. It is of course true that both employer and employees are necessary to the conduct of modern industry, but that does not make them "partners." It requires two opposing teams to make a football game. Like athletic teams, employer and union representatives are engaged in competitive action. Personal animosities, hatreds, and unfair actions occasionally occur but are not inevitable or inherent. However, when two teams come up to the line, an element of belligerence, even if friendly, is bound to be present.<sup>1</sup>

The "employers" of the vast majority of organized workers in the United States are corporations. Their spokesmen are salaried

<sup>1</sup> In connection with this chapter, a reader will find pungent ideas in B. R. Abernethy, *Liberty Concepts in Labor Relations*.

representatives of management, which is obligated to do everything it can legally do to provide dividends for stockholders. On the other side, where collective bargaining exists, the employees are represented by union spokesmen who are responsible to the membership. Representatives on both sides are therefore professional representatives, whose duty it is to achieve the best bargain possible. Although they may frequently arrive at mutually beneficial results, it is more frequent that a gain for one side constitutes a loss for the other. Each side is constantly on guard against the invasions of the other; each is always seeking strategical advantages for use in bargaining with the other. Therefore, it is quite unrealistic to claim that they share an identity of interest to such an extent that the employer's wishes can be assumed to represent those of the employees. It must be clear that this diversity of interests was not created by unionism. Rather, unionism came into being because of the diversity of interests.

It follows that any employer may at any time find a union standing in the way of his business desires. He may fully understand the reasons for unionism and actually believe in the social desirability of unionism. Yet his own interests require him, like the football captain, to watch every move made on the other side of the line. An "enlightened employer" is one who understands this relationship and can therefore enter into the occasional combat without personal animosities and under the rules of fair play. On the other hand, a "union-hating employer" does not fully comprehend that unionism arises inevitably in a democratic system and adheres to the delusion that unions can be abolished without imperiling the system of free enterprise. He bargains with the union only when he must, his real goal being the total destruction of the union. Employers are ranged between these two extremes, with the result that they cannot be united into an all-embracing organization with a single purpose.

### EMPLOYERS' ASSOCIATIONS

Although it is difficult for large groups of employers to adopt a unified policy toward labor unions, certain segments of industry

have been quite successful in this regard. It should be noted that industrial and trade associations are not necessarily concerned with labor relations. Many of them are organized to engage in group advertising, research, promotion, or marketing. Present attention is directed solely to those associations in which member companies function solely as employers, that is, in their relation to labor. Such group activities are not new; as far back as 1798 the employers in the shoe-making industry in Philadelphia organized a "defensive" association to deal with the journeymen's union.<sup>2</sup> Like the early-day unions, the early employers' associations were transitory, but they did make an occasional appearance throughout the nineteenth century. After 1900, however, a large number of enduring organizations came into being. The National Association of Manufacturers, which had been founded in 1895 as a trade society, had by 1903 become concerned chiefly with labor relations, an interest which it still retains. The American Anti-Boycott Association, dating from 1902, was frankly militant in its opposition to unions. However, there were (and are) comparatively few nationwide multiple-industry associations. Beginning in 1900 in Dayton, Ohio, many associations were formed with the design of including all employers in a particular city, regardless of the industry in which they were engaged. The other principal type covered a more extensive geographical area but was limited to a specific industry. Examples of the latter are the National Metal Trades Association, the National Founders' Association, and the National Erectors' Association.

These associations came into existence as inevitably as did unions and have used much the same strategy on one side as the unions have on the other.<sup>3</sup> In their day-by-day function, however, they are less likely to engage in direct negotiations over matters of union-management relations. In most instances they do not take the place of the individual member company at the

<sup>2</sup> For details on the famous Cordwainer's case, see J. R. Commons and associates, *History of Labor in the United States*, The Macmillan Company, New York, 1918-1935, Vol. I, especially p. 133.

<sup>3</sup> For the early history of these associations, see Clarence E. Bonnett, *Employers' Associations in the United States*.

bargaining table; rather they lend aid, advice, and support in the event of a strike. In some cases, as in the instance of the Waterfront Employers' Association of the Pacific coast, they do the actual bargaining and represent the member employers in all questions of labor relations. This practice is comparatively new, however, and is relatively uncommon.

Employer associations have certain advantages, structurally, over unions. It is possible for them to represent much larger aggregations of wealth. They may therefore employ the finest negotiators, research workers, and lawyers. Since, as employers, they are apt to be the principal advertisers, they are more apt to secure a favorable presentation of their position in the newspapers. They have fewer individual members than the opposite unions and are better able to maintain secrecy in their confidential plans and policies. On the other hand, they suffer from certain inherent disadvantages which weaken them in their dealing with unions. Members will usually be divided in their approval of belligerent tactics. Small employers tend to resent the dominance of the policies of large employers, and individual companies are apt to reject at any time the policies laid down by the association. It must be remembered that the firms which try to unite in their labor policy are competitors in the market, and this causes complete unity of action to be almost impossible.

Popular discussion of collective bargaining has focused so much attention upon unions that it is frequently forgotten that bargaining is quite often "collective" on both sides. In their nature, employers' associations are less conspicuous, and often their participation in a negotiation is "behind the scenes" only. But they are a powerful force in labor relations and must not be discounted.

### THE EMPLOYERS' WEAPONS

The employer starts off with an advantage over the individual worker in bargaining position. This advantage may be partially or completely nullified by a combination of the workers in a union. If his employees become a part of a strong union of similar workers throughout the nation, the bargaining position of

the workers may become much stronger than that of the small employer. The latter may achieve a comparable strength only by joining a strong employers' association. A large and influential employer may rely on his own strength and operate independently. In neither case is an employer as dependent upon collective action as are the workers.

Since all employers are in a sense belligerent or potentially belligerent in their attitude toward unions, they have developed certain tactics and special weapons which are widely used by independent employers as well as by associations. Many, if not most, of these weapons are legal and perfectly fair. They are the counterpart of the union's weapons and are properly used in the competitive contest which goes on between them. Other weapons are illegal, improper, and usually foolish.

Perhaps the most obvious weapon in the employer's arsenal is his superior knowledge of the condition of the business. He knows the possibilities of sending part of his work out to non-union subcontractors. He knows the possibilities of merging his business with another concern. If he threatens to close his plant, the workers have no way of knowing whether or not he can afford to fulfill his threat. More often than the union, he is able to employ the most experienced negotiators and highly skilled attorneys. In addition, he is apt to secure more favorable publicity in the newspapers and the radio. Since the details of his own activities in labor relations may be kept a secret, the public is more easily led to believe that he is the victim of persecution by unreasonable union leaders. If he alleges that he is now paying the highest wages that his business will permit without bankruptcy, the public is inclined to believe the statement without proof.

Although the workers cannot know the details of the employer's policy, or what is in his mind, it is less difficult for the employer to know what his employees are thinking and what are the policies of the union. In a large group of employees it is almost inevitable that there are some few who will, perhaps quite honestly and with the best intentions, inform the employer about the views of employees and of union officials. Casual remarks made to foremen will probably trickle on upward to the higher management. It is axiomatic that a large group of people

cannot keep a secret; the transactions of a general union meeting can therefore never be a secret. Only the most obtuse employer can be completely isolated from what goes on beneath his very nose. Even the most intelligent workmen, however, can be ignorant of what goes on, not only above their heads but also behind their backs.

The employer's strongest legitimate weapon, therefore, is the body of facts which he has at his disposal. His second weapon, clearly, is his ability to use those facts in the most strategic fashion, an ability resting largely upon his superior access to the ear of the public. These are powerful weapons. But some employers have felt these to be either inadequate or too slow and have resorted to less respectable devices.

### THE BLACK LIST

In the eyes of the employer, a particular employee may be a "troublemaker" in that he favors the creation or strengthening of a union, points out to his fellow employees that working conditions are in need of improvement, or otherwise expresses dissatisfaction with the management. The employer may be quite sincere in his belief (indeed, he might be quite correct), and may further feel that the welfare of the entire community would be improved by the permanent departure of the troublesome individual. In the event that this person is discharged or quits, it seems natural for the former employer to notify other employers in the area or industry of his undesirable qualities. If employers in the community are organized into an association, this is especially easy to do, but even without organization it is ordinarily not difficult to notify those other employers who customarily require the skill of the man in question. The placing of a worker upon such a proscribed list is known as "black-listing." In several states, black lists are illegal, but they persist because they are known to comparatively few persons, and there is practically no way to prosecute an employer for violating the law.<sup>4</sup>

<sup>4</sup> I gave an account of a particularly virulent black list in "Employment Exchanges for Seamen," *American Economic Review*, XXV (June, 1935), pp. 250-258.

They may be lists maintained on a systematic basis or simply the informal or even unwritten passing of information from one employer to another. The worker in question will probably remain unaware that he has been black-listed until long after the event. Upon applying for a job he is of course not told of the black-listing but is turned down on one pretext or another. It may be that the truth will not dawn on him until after long and fruitless search for a job, by which time it is too late for him to do anything about it. It may follow him about the country and forever prohibit him from pursuing his trade.

If, in one plant, the story gets around that union-minded workers have been black-listed, other workers will be intimidated and an incipient union movement may collapse or at least be deferred. And this, ordinarily, is the purpose of a black list.

No doubt it is improper, and in some states illegal, to hound a man to his grave. It has been defended on the ground that it is merely the employer's counterpart of the boycott, used frequently by unions. The real difference between the two, however, lies in the secrecy which surrounds the black list and which cannot obscure a boycott. The black-listed man does not know that he is black-listed and he can therefore make no defense. He is condemned without a hearing and without his knowledge. Even if he has been driven out of the trade he can seldom be sure of the reason. It is therefore susceptible to abuse through the whims or fancies of foremen or managers who may seek revenge for real or imaginary personal affronts. It is chiefly dangerous because it is a concealed weapon. If it were not concealed, it would be ineffective.

### THE LOCKOUT

As its name implies, a lockout is an action by an employer to prevent all or a group of his employees from performing their work. Normally it takes the form of a shutdown of the plant or shop in order to induce the employees to accede to a management proposal which they have rejected. In brief, it is the employer's counterpart to a strike. It is sometimes, if not usually, difficult to distinguish a lockout from a strike since a shutdown



usually follows a series of charges and countercharges, and the identification of the original initiative is obscured. For example, an employer may close the plant in immediate anticipation of a strike so that, although he orders the shutdown (lockout), the real initiative lay with the union (strike). Or, on the other hand, the employees might be maneuvered into walking out (strike) although the initiative and accomplishment of the maneuver must be credited to the employer (lockout). This difficulty has led those agencies which collect labor statistics (like the U.S. Bureau of Labor Statistics) to abandon the use of the terms "lockout" and "strike" and to deal only with "work stoppages." Although it is not feasible to tabulate the number of lockouts, the fact of their existence must be recognized. They are legal unless it can be proved that their purpose is interference with legitimate union activity, and they are frequently a powerful weapon in the hands of the employer.

Assume a firm in which the management desires to destroy a small and struggling union which is showing promise of imminent success in organizing the majority of the employees. Assume also that there are periods in the year when business is normally slack. By maintaining maximum output during the months immediately preceding the expected slack period and building up a surplus or stock pile of product with which to fill anticipated orders from customers, the management can reach a condition in which it can shut down the plant abruptly. Word can be gotten out to the employees that the plant will remain shut until the "union agitators" are eliminated. Those workers who are already union members may be defiant at first, but as time goes on they will find that hunger often dulls a defiant spirit. Those who were not union members will incline to blame the union for their troubles and to become violently antiunion in their attitude. When the union is annihilated and the plant reopened, the employer will have lost nothing and will have gained his "open shop."

In actual practice, the procedure is usually much more complex than in the preceding illustration. Simplification was necessary for both brevity and clarity, but the essential characteristics are there. In perhaps the majority of instances, the lockout

will appear to the public as a strike or else as a normal shutdown arising out of a slackness in business activity, having nothing to do with labor relations.

Very similar methods may be used to break a strike, even where the union is fairly strong. Typical of this technique is the system that has come to be known as the "Mohawk Formula." This is not, of course, a lockout, but the employer strategy is so similar that it is properly mentioned here. In this case, a strike has actually been called, and the plant has been closed for some days or weeks. The employer, working through friends in the neighboring business community, secures the creation of so-called "citizens' committees," dedicated to the patriotic task of driving the "labor racketeers" and "agitators" out of town so that "loyal employees" can return to work. With a subtle follow-up, culminating in a grand reopening of the plant, the strike may be broken. Innumerable variations, largely determined by local circumstances, appear in the development of this formula. This, like the lockout, is a form of strategy which consists chiefly in intimidation.

### POLICE AUTHORITY

In the United States it is permissible to maintain, at private expense, a police force endowed with public authority. That is to say, plant or company guards, on the pay roll of the employer and expected to follow his orders, may be sworn either as deputy sheriffs or as special officers of the state, county, or municipal police force. In most cases they serve actually as plant guards, engaged solely in protecting the employer's property against theft or pilferage. In many other cases, however, they have been used as "union breakers" and in interfering with the civic rights of the workers. In countless cases these company police have interfered with the legal privileges of employees by arresting and detaining union organizers, often with no charge preferred against them. They have driven innocent people from public streets and buildings and have broken strikes by arrest of leaders or by the mass arrests of workers. In a dispute in which the merits of the respective sides have not yet been determined,

it is hardly proper for the power of the law to be perverted to the advantage of one side. The manifest unfairness of such a situation has led desperate workers to engage in violent actions which they would otherwise have avoided.<sup>5</sup> In this way, the law has been used to stimulate law breaking and create violence. When employees discover their employer using such tactics, they know that they are more than usually in need of the protection which a strong union can give. Ruthless and brutal tactics by employers have served in nearly every case to strengthen what they sought to destroy.

Company police have been the most easily used by employers for their private purposes, but the regular and established police forces of the state, county, and city have sometimes been used in the same way, and at the public expense. The old Pennsylvania Constabulary, since reformed, was used in this way during the steel strike of 1919, and countless times the municipal police, under the guise of protecting property, have been made a part of an employer's antiunion strategy. As a result, organized labor has come to have an undying hatred for the "cossacks" and the "troopers." Workers frequently misjudge the cases where police authority is properly used, and the public authority in general has been shaken. There is nothing to justify or commend the misuse of the power of the police.

### THE LABOR SPY

One experienced labor official observed that he had never seen a gathering of union members which was large enough to be called a meeting and small enough to exclude a spy. The spy may, of course, be an amateur. That is, he may be one of the workers who, seeking to ingratiate himself with the manager, informs the latter about the activities of union leaders and about significant union actions. Apparently there are always such people, and the fact of their existence is no fault of the

<sup>5</sup> Real illustrations and intelligent discussion of them are to be found in Edwin E. Witte, *The Government in Labor Disputes*, Chap. IX, and in Harry A. Millis and R. E. Montgomery, *Organized Labor*, Chap. XII. In both works, footnote references list the best primary sources.

management. But some spies are professionals, and the management pays money to have them "planted" among the regular employees. Around the professional labor spies have been spun the most fantastic network of true stories in the history of American industry.<sup>6</sup> Undercover operators have caused inestimable damage to employers, workers, and the general public. They have brought about violence, bloodshed, and murder; they have wrought untold damage to property and to the American spirit.

The labor-spy system came into being in a rather natural fashion. An employer, inexperienced with unions, was often distressed to notice that "something was up" among the employees, that there were strong undercurrents which he could not understand. To him it seemed quite a good idea to place some pseudo worker in the shop who could report to him in detail. Since the amateur spy is not apt to be very successful, he accepted the suggestion of a detective agency that a trained professional detective be placed on the job. Agencies could furnish men who were not only trained as spies but possessed the industrial skill requisite to the genuine operations of the job. Most of these spies came from one of two classes: gullible dupes who, in pressing need of money, had sold themselves inextricably and ex-criminals who had found it difficult to make a living. Once an employer signed a contract with the detective agency, trouble was likely to begin. The spy sought to worm his way into the confidence of his colleagues in the shop; he sought union office and leadership among the workers. He reported regularly, through the agency, to the employer. Of course, if he could report nothing of importance the employer would soon dispense with his services. In order to hold his double-paid job,

<sup>6</sup> A monumental source book is the aggregation of hearings and reports of the "La Follette Committee," fully entitled *Violation of Free Speech and Rights of Labor, Hearings before a Subcommittee of the Committee on Education and Labor*, United States Senate, Pursuant to S.R. 266, 74th Congress, 2d Session, 75th Congress, 1st, 2d, 3d Sessions, 76th Congress, 1st, 2d, 3d Sessions, and accompanying reports. Among the popular books are Sidney Howard, *The Labor Spy*, Edward Levinson, *I Break Strikes*, and Leo Huberman, *The Labor Spy Racket*.

therefore, he had to create trouble if none already existed. It was to the interest of the spy and the agency to keep the entrapped employer in a constant state of fear, and this was most easily accomplished by stirring up the workers toward unionism and strike. Indeed, if the employees did strike, the agency could probably make a lot of money by furnishing professional strikebreakers. The man whom the employer paid to solve his troubles turned out to be the troublemaker himself. This general pattern, with an infinite variety of details, has been repeated over and over. Some control over these so-called "detective agencies" now exists, but the spy system continues to mulct American employers of millions of dollars a year. This fact is not a tribute to the perspicacity of the captains of industry, but the fact remains. Many employers have learned from bitter experience and now shun the use of labor spies, but many other employers have not learned the nature of the system. Since it operates secretly, it is natural that many managers, concerned primarily with production problems, have not learned its true characteristics.

Not only has the labor spy done great damage and cost large sums to the employers, but he has also earned the hatred of the working people. The bitter contempt felt toward spies and professional strikebreakers by members of the labor movement is beyond description. Suffice it to say that the unmasked spy becomes a social pariah and can live only with the other outcasts of society. Thus, in the long run nobody benefits from the system—everybody loses. Its continued existence is evidence of the proposition that large portions of the American economy have not yet outgrown a state of adolescence.

Along with the spies are the professional strikebreakers, the hired "goons," or "plug-uglies," and the slinking provocative agents which a few employers continue to inject into labor relations. By unionists, these "hangers-on" of industry are generally known as "scabs" and "finks," terms which have no universal or precise definitions but which invariably carry connotations of the deepest opprobrium. Peaceful and intelligent collective bargaining cannot exist where these people are utilized. Their presence is an evidence of an employer's bad faith and usually of

his lack of balanced experience. Fortunately the practice of using them appears to be diminishing.

### OTHER EMPLOYER WEAPONS

Those perfectly proper and legitimate weapons which an employer uses in his day-by-day collective bargaining will appear in the next chapters. Even before those pages are reached, however, it must appear evident that no employer is powerless and that many employers have vast power.

### THE UNIONIST'S VIEW OF THE EMPLOYERS

It must not be assumed that all workers, or all union members, hate their employers. Such an attitude will certainly characterize a minority. But workers have for centuries been struggling for a real share in the determination of their own working conditions. This struggle has inevitably involved a constantly increasing encroachment upon those prerogatives which employers had believed to be theirs by right. Throughout the years, accordingly, unions have met with steady resistance from employers as a class. The unionist assumes that, while his employer may be very pleasant and agreeable as a person, he has certain opposite interests as an employer. Conflict is therefore taken for granted. An employer's profession of good faith is unlikely to be accepted until it has been demonstrated in practice since the experienced labor leader has learned to put his confidence in actions rather than in words.

This statement of labor's attitude toward management is simple, but in general it is an accurate summary of the most common view. Many people misunderstand it, however, and assume that there is more personal dislike in labor's attitude than actually exists. The union spokesman says that he is performing his job and the management representative is performing his. Most American unions are essentially business organizations, as are the firms with which they deal. The relation is thus similar to the relation between any two business organizations which are bargaining together for special advantage.

Just as managers differ among themselves in their attitude toward unions, so do unionists differ in their attitude toward management. Some are willing to meet the manager halfway; they are on their guard but are anxious to bargain fairly and in good faith. At the other extreme are those who are convinced that managers as such are enemies of the workers and of the people. Spotted in between are the great majority of union leaders. Some will use more violent weapons than others, and they differ in their judgment of acceptable strategy.

### UNION ACTIVITIES

The immediate job of any union is the betterment of the wages and working conditions of its members. Its capacity to accomplish its immediate mission depends upon its strength. Its fundamental duty toward itself, therefore, is to increase its own strength. This, upon which its bargaining position depends absolutely, is the constant concern of any good union leader. It is, indeed, the reason for his existence as such. Out of this have grown many union activities which are related to the day-by-day bargaining in no other way.

One of the oldest of these is the maintenance of some sort of insurance scheme. Nineteenth-century unionists discovered that, during periods of unemployment, membership fell off seriously. To maintain membership, small-scale insurance plans were instituted which required that the individual continue in good standing in order to keep the insurance in force. Dues were often either reduced or remitted during the time that a member was unemployed. With this double inducement, union members were more inclined to maintain their membership for life. This and similar devices are in wide use in unions today.

Again, unions early found the advantage of publishing their own newspapers and magazines. Feeling that the regular city dailies did not often print the labor side of current issues, the "labor press" came into existence. Circulation is chiefly among union members, and both editorial and news policies are guided by that fact. As with any large group of newspapers, the quality varies considerably. The basic purpose of their existence, how-

ever, is the increase of loyalty to the union by its members. With that goal, they tend to be either educational or propagandist in character, and there can be little doubt that they serve an exceedingly useful purpose of the present-day labor movement.

Among the more recent of the collateral activities of unions is the operation of workers' education. In Chap. 8, brief reference was made to the "independent" labor schools. In addition to these, many unions conduct classes on their own account. They furnish technical training for actual or prospective union officers, and in addition they provide both entertainment and indoctrination for the general membership. One of the most conspicuous illustrations of the way in which the latter two purposes can be effectively fused is the highly successful production of a play, "Pins and Needles," which attracted full-house audiences throughout the nation in the late 1930's. The performance was the outgrowth of the regular educational program of the International Ladies' Garment Workers Union.

Increasingly, unions are cooperating with universities in the offering of advanced training for workers' representatives. Industry raises no serious objection to the general principle that union officials should be better educated. Quite properly, universities remain impartial on particular labor-management issues, and the worker education which they offer is designed to be sound and unbiased. This program has been greatly stimulated in recent years by the creation in several dozen leading universities of labor-relations divisions or institutes, many of which are provided with funds for scholarships. Unions of course do not control these academic units, but they have shown an increasing interest in cooperating fully with them.

### MEMBERSHIP RESTRICTIONS

Since the medieval days of the guilds, many craft organizations have sought to preserve the identity of their crafts through the restriction of membership to persons of demonstrated skill. With the development of machine technology, craft skills have been "watered down," at least in the most strongly unionized crafts. As a result, restriction of membership through the use of a



rigid examination of skill and ability is becoming markedly uncommon, although it is still found occasionally.<sup>7</sup> It was, after all, an inherent part of the old apprentice system, in which young men were given years of training in the trade before they could receive formal admission to practice the craft. The "drift toward mediocrity" which the factory system set in motion has tended to eliminate the need for either apprentices or quality standards for admission to a union.

The notion of restricting union membership has not tended to disappear at the same rate, however, because the benefits that accrue to the existing membership as a result of the restrictions are still very real. There are two tangible advantages: restriction helps prevent such overcrowding in the trade as may force wages downward, and it assists in reserving jobs for the regular members during periods of unemployment. Out of this double pressure (wages and jobs) has developed the "closed union," a union which admits few or no members over a substantial period of time. A weak union, of course, cannot close its doors without risking suicide. But many strong unions can enforce an unofficial closed shop through forbidding their members to work with nonunion workers. Prior to the enactment of the Labor Management Relations Act of 1947, a closed shop maintained by agreement between union and employer was legal and found widespread usage. But even since the prohibition of the contractual arrangement, strong unions, sometimes with the cooperation of employers, have been able to maintain what is in effect a closed shop. If a union in such a position should then refuse to admit new members, it becomes virtually impossible for any new worker to enter the trade. Although the reasons for such restriction are clear and often logical, the practice may be overdone to the detriment of the public welfare. In this sense it is identical to any other form of induced monopoly. It may force wages to an impractical height and thus cause unjustifiable hardship to both the employer and the consumer. It prevents competent craftsmen who are willing or even eager to join the

<sup>7</sup> A wealth of information on this subject is available in Sumner H. Slichter, *Union Policies and Industrial Management*.

union from doing so and hence from following their trade. It may also reduce the volume of output for the industry concerned to the misfortune of the entire community. It should be remembered, however, that a union very seldom has sufficient power to maintain both a closed shop and a closed union for very long so that the more baleful results of the practice are not common. The occasional incidents which do occur have caused more concern in the minds of casual observers than is warranted by the small size of the problem. After all, there is some merit in restricting the number of practitioners of a trade to the number of jobs available in that trade. Like all monopolistic practices, it can be beneficial or evil, depending upon how it is administered.

### THE UNION LABEL

In San Francisco, in the 1870's, there was bitter competition between the white American workers and the Chinese coolies who had been imported, chiefly by the railroads, as common laborers. The Chinese, seeking to improve their status, had entered many trades, and among these trades was cigar making. The prejudice against Chinese-made cigars extended to the majority of the Western customers. In 1875 the Cigarmakers' Union, which admitted no Chinese to membership, capitalized on this prejudice by labeling cigars to indicate that they were Union Made and hence made by white workers. This was apparently the first regularly issued union label. In 1881 the idea was introduced at an American Federation of Labor convention, not as a device to foster racial discrimination but to enable union members to patronize the products of other union members. For this purpose the label is now widely used on a great variety of products from cigarettes to suspenders. In communities in which a large portion of the population is composed of union members, merchants find it difficult to sell products, especially items widely used by working people, that do not bear a union label. This pressure is passed on back to the manufacturers who seek the right to use the label as a means of sales promotion. The union label, like a copyright, is protected by law against

forgery or unpermitted use. The manufacturer secures the right to apply the label through a contract with the union, which thus ensures that union conditions prevail in the plant. Even to the nonunion consumer, the label therefore guarantees that the product, which may be personal wearing apparel or food, was not made in a disease-infested "sweatshop."

The union label further provides a symbol to attract the loyalty of union members. As such it has become a powerful weapon in the hands of unions. It has encouraged manufacturers to deal with unions, it has attracted support from the nonunion public, and it has built internal morale within the labor movement.

In many trades, the product is such that a label may not be attached, and substitutes in the form of placards or badges have been devised. Haircuts and shaves are not susceptible to labeling, but the barber-shop window carries a sign denoting the establishment as a Union Shop. This is also true of restaurants and bars. Again, the work of a railway switchman or a truck driver results in no product to be labeled, but the workman himself wears a union "button" as identification. The purpose and function in each case is identical to that of the union label.

## THE BOYCOTT

As pointed out in the preceding section, the union label is designed to encourage workers to prefer union-made goods. A boycott is similar in general purpose but more positive in action. It is an attempt to prevent union members from purchasing a good or using a service resulting from nonunion conditions. It is a more formidable attempt to mobilize the power of labor *as consumers*, either to punish an employer for actions disapproved by the union or to bring pressure upon an employer to adopt a course of action desired by the union. Since the circumstances vary widely, the nature of boycotts is quite diverse. Indeed, they differ so greatly in type and detail that universally accepted definitions of the varieties of boycott have not yet evolved. It is not within the province of this book to present

the intricacies involved in the different legal concepts, and only the general idea of the boycott will be discussed.

The simplest expression of the boycott is the *We Don't Patronize or Unfair list*. This is a list, posted in the union hall or published in a labor paper, of those firms against which the union has a grievance. Members are either discouraged, or prohibited under penalty of a fine, from trading with the firms whose names are so listed. Since there can be no legal compulsion upon anyone to deal with a merchant if he doesn't so desire and since a union is a private and voluntary association which is entitled to make the rules of its internal guidance, the *We Don't Patronize list* is proper and legitimate. Its effectiveness is limited, of course, by the extent to which the firms listed are dependent upon the trade of union members. However, each union seeks the support of other unions in avoiding the proscribed firms. Therefore, in a strongly unionized community the list may become really effective. In general, however, it has little effect upon the trading habits of the general public.

The comparatively passive *We Don't Patronize list* is at times supplemented by an active boycott campaign against one particular firm or product, frequently with an attempt to secure the support of nonunion people who are sympathetic to labor. Developments from this sort of campaign lead to the multitudinous forms of the boycott, such as the forbidden "secondary boycott" and other varieties for which the nomenclature is not settled. Ordinarily a secondary boycott exists when trade is stopped with one business establishment in order to bring pressure on another. For example, assume a union grievance against a particular stove manufacturer. For unionists to refuse to buy the stoves made by that firm would be a simple or "primary" boycott. If this does not produce sufficient pressure, the unions might proceed to boycott any merchant who sells these stoves, that is, they might withhold all their custom, including that for other products also handled by the merchant, expecting the merchant to bring pressure upon the manufacturer to settle his labor troubles. This refusal to trade with the retail dealers would constitute a secondary boycott. Simple refusal to trade, of course, is legitimate. However, picketing or other

devices that achieve publicity are illegal in secondary boycotts. Picketing in a boycott consists simply in stationing one or more persons at or near the premises of the employer in question, each person displaying a sign or banner which briefly informs the public of the circumstances. Such picketing is always legal in a primary boycott, but in other forms it is either illegal or of doubtful legality.

A variation of the boycott which has recently attracted much attention involves the refusal by members of one union to work upon materials originally produced either by a rival union or by an "unfair" employer. In the vernacular of the labor movement, such goods have frequently been called "hot cargo," or simply "hot." This is a boycott in the sense that it is an effort to induce the immediate employer to refrain from trading with the firm that recognizes the rival union or is otherwise unsatisfactory to the union utilizing the device. But since it involves a refusal to work under specific circumstances, it also partakes of the nature of a strike. This weapon frequently works great hardship upon employers who are helpless to do anything about it, especially when it arises out of a jurisdictional quarrel between two unions. For example, the Smith Lumber Company may operate under an agreement with the ABC union. Carpenters who belong to the XYZ union may refuse to work with the Smith lumber because they are engaged in a dispute with the ABC union. The Smith Company is helpless because it cannot refuse to deal with the ABC union unless its employees themselves vote to change their affiliation to the XYZ. Great hardship with little or no compensating good may result from such a situation. A number of states have by statute declared such "hot-cargo" boycotts to be illegal, which of course also bans those similar devices which would ordinarily seem quite justifiable. The Labor Management Relations Act of 1947 has declared all secondary boycotts to be "unfair labor practices."

### COLLATERAL UNION WEAPONS

There are many members of the general public who, although not affiliated with any union, are sympathetic to the legitimate

aims and purposes of labor unions. In the last few decades labor leaders have learned the value of deliberately soliciting the support of this group. This can be accomplished in various ways, the most obvious of which is the maintenance of a "public-relations" program. Through the newspapers, the radio, and the various mediums of advertising, the labor movement has sought to inform the public of its position and to seek a favorable public reaction to its procedures. This it calls "educating the public," and to a large extent the appellation is justified. It remains true that large numbers of Americans have only the most vague notion of the purposes and methods of labor unions, and people are often intolerant of that which they do not understand. The more intelligent labor leaders do not hope to convert the public to an actively "pro-labor" viewpoint, but they do hope to get a fair hearing. This, which they certainly did not have in the past, is the proper function of a union program to improve public relations.

### POLITICAL ACTION

As was indicated in the preceding chapter, labor's political action has been most successful when conducted on a nonpartisan basis, and in the United States there has been no continuing and nationwide labor party. Labor activity in the political arenas, however, has been substantial. From the local to the Federal plane it has exerted influence and pressure upon the representatives elected by established parties, has often determined the outcome of elections, has blocked distasteful legislation, and has successfully lobbied for favorable enactments. Inevitably the political programs have tied in closely with the campaigns for desirable public relations since some support from the non-union population is requisite to political success in many instances. But the main power behind the political spokesmen of labor is the union membership itself. If all union members were to vote the same way, their votes could dominate all major elections in the United States. Those among organized workers eligible to vote (possibly in excess of 10 million) plus the voting members of their families (at least another 10 million)

could become a majority bloc. They don't all vote together, of course, and many are apathetic and fail to vote at all. Hence the so-called "labor vote" is never a reliable political instrument. But at special places and special times, portions of it do coagulate and constitute a localized and temporary majority. In an effort to extend and solidify this potential power, several leaders of the CIO in the 1940's promoted the Political Action Committee (PAC), which played a large part in several national elections and which is still in existence and may continue to be important. Unless it can acquire the support of the CIO, the AFL, and the Independents, however, no political committee will achieve the force necessary to determine the outcome of major political battles.

Political pressure through the "lobbying" technique continues to be the most successful device for labor's participation in politics. The congressman from a strongly unionized district is bound to be highly sensitive to labor opinion.

### FORCE AND VIOLENCE

Throughout labor's long uphill struggle for bargaining power, the frequent use of force and violence has manifested the deep-seated essence of the struggle. From brickbats to dynamite, physical weapons have repeatedly dominated the scene. As pointed out earlier in this chapter, the responsibility for a large portion of this violence rests with employers, but labor must share heavily in the guilt. It has invoked the club so frequently that many bystanders have come to assume that violence is an inherent part of union policy. This perhaps arises out of the publicity given to the turbulence that marks many strikes. But even when no strike is going on, physical force has been used by unions.

It is much more difficult for a union to place a spy in the management's executive offices than for the employer to place a spy in the union, but it has, on rare occasions, been accomplished. A quick-witted girl, employed as filing clerk or stenographer, can often secure a great deal of valuable information for the union leaders. Such a spy, however, can hardly have

any influence on management policy, and physical violence seems unlikely to result.

In organizing campaigns, however, brute force has occasionally been employed. Union-paid gangs of strong-arm men, "goons," have beaten many an antiunion worker. Nonpaid unionists, too, have engaged in the same activities. Many of the latter are men whose daily occupations are rough, and when they have a battle to fight, they quite naturally utilize physical methods that are also rough.

Wise union leadership has done everything in its power to minimize the use of physical force by unionists, both in and out of strikes. Almost inevitably violence postpones the achievement of satisfactory relationships with the employer and thereby costs much more than it gains. There is no adequate justification for its use by either side.

### THE STRIKE

The most direct and definitive weapon in the hands of workers is the withholding of their labor. No industry can operate without labor; no profits can be made. An employer whose plant or shop is closed because of the refusal of employees to work until certain demands are met may be forced to come to terms. Labor leaders customarily refer to the strike as their "weapon of last resort," the action that they must take when all other methods fail. In principle this is correct, although in practice union leaders sometimes fail to try all other possible methods. Like a nation going to war, a union may go on strike for strategic purposes. For example, in a loosely unionized industry a successful strike may bring many members into the union and establish its strength, thus serving as an organizational device rather than as a last step in collective bargaining. Other strikes have political purposes, such as the taking of steps toward a Communist revolution or discrediting a political party in power. Still other strikes do not follow upon exhaustive negotiations but arise impetuously out of a surcharged atmosphere of social tension.

There exist no statistics to support the assumption, but it



is probable that the great majority of strikes do actually represent a "last resort," that genuine negotiations have failed, and that the union faces no alternative other than the complete surrender of its position. Experience seems to support this observation, and it is explained by the fact that it is not usually an easy matter to lead a large number of workers into the sure hardships of a strike unless they are convinced that there is no alternative. In spite of the loose popular talk about labor "czars" and "bosses," the rank-and-file members always retain the final power over their actions. To the workers themselves, a strike means the temporary end of their incomes and probably their inability to meet installment payments on their homes, their cars, or their radios. It is a very serious personal matter, not to be entered lightly. Workers who have gone through strikes have had this forcefully impressed upon them, and they are unlikely to sacrifice their economic security for a will-o'-the-wisp or because of the boisterous shoutings of demagoguery. Ordinarily they will not strike unless they are convinced that such action will, in the long run, either preserve or increase the economic security for which they make temporary sacrifice.

To the employer, also, the typical strike may mean serious financial problems. In such cases, he does not accept the gauge of battle unless he is convinced that it will be a lesser evil than the granting of the union's position. Of course, not all strikes mean financial loss to the employer. He may be approaching a period of slack business; he may be able to pass the temporary costs on to the consumer; he may recoup part or all of the paper loss in tax savings; or he may simply defer operations to a later date with no long-run losses at all. But he can never be sure how long the union can maintain the strike. Hence he always faces a risk. In general, however, it must be apparent that in the majority of instances a strike means more hardship to the workers than to the employer.

Properly speaking, strikes are not caused by demands of either the union or the employer. They are caused by a breakdown in the process of negotiation between the two. It is this which makes it so difficult to discover a solution acceptable to both sides. It is true that the negotiations are concerned with

specific demands, sometimes by the union and sometimes by the employer. These demands, therefore, are usually spoken of as the "strike causes." But this is misleading since the real cause is the termination of discussion of the demands. That will have come to include additional factors, such as the conviction held by one side that the other is not bargaining in good faith or the personal incompatibility of the spokesmen for the two sides which is reflected in widespread irritation among the workers. Thus strikes are seldom caused by purely economic questions. The actual cause is usually a complex of economic, psychological, and sociological factors. A widespread failure to understand this seemingly obvious fact has led to many bargaining difficulties which will become apparent as the next chapter progresses.

This complexity of causal factors also determines whether or not a strike is accompanied by violence. Industries in which employment and profits are both irregular are apt to yield the most frequent strikes. Coal, lumber, and shipping, for example, are industries in which strikes are more frequent and more bitter than railways, telephones, and printing. The position of both sides is less secure, and both are willing to fight for greater security. Further, in industries where the work is rough and heavy the strike is more apt to be accompanied by violence since "roughness breeds roughness." As Samuel Gompers once said, "You can't breed diplomats on fifty cents an hour." Experienced and capable labor leaders will attempt to organize a strike so carefully that violence is eliminated since they know that it never yields desirable results. However, if the circumstances are sufficiently heated and the strikers are provoked, violence may appear like spontaneous combustion.

### STRIKE TECHNIQUES

Union conduct of a strike has come to be something of an art. Out of many years of forcible experience, labor leaders have learned that a spontaneous and misdirected strike is likely to be a dismal failure and further that it is apt to create violence and thereby put the whole labor movement in public disfavor.

Out of experience and knowledge, an art (or is it a science?) of strike conducting has emerged, and certain union organizers and advisors have become specialists in such matters. Preparations for a modern strike involve long and busy hours of planning and organization. Ordinarily there is a general committee of top leaders concerned with policy, strategy, and control. A sub-committee may devote its attention to discipline and order and to provisions for systematic picketing and self-policing. Another committee will strive to secure the most favorable publicity and generally look out for public relations. Other groups will be concerned with the relations with other unions, seeking financial support, cooperative boycotts, and perhaps sympathetic strikes by friendly unions. Very important, of course, are the finances, and a committee will have charge of them. Money will be needed to feed the pickets, to provide strike benefits to the families of strikers, to pay for newspaper advertising or radio time, and a multitude of lesser items. Also, since it is expected that the strike will someday come to an end, responsible union officials must be constantly informed on the whole picture and stand ready to resume negotiations with the employers at the proper strategic moment.

This type of organization presents big problems for even a small strike. But for a strike involving hundreds of thousands of men it requires most exceptional organizing ability. Any large strike which remains orderly, thorough, and efficient is unmistakable evidence of genuine practical competence on the part of the leaders. And as long as strikes continue to occur, it is in the interest of everyone that they be conducted on an orderly basis. In disorderly strikes, there may occur human injuries and even death to strikers, employer representatives, police, and innocent bystanders, and the physical property of the employer, of the strikers, and of the public may be destroyed. Further, the occurrence of violence often makes it even more difficult to arrive at a lasting settlement of the dispute so that the trouble and the threat of additional violence are perpetuated.

## THE PICKET

Workers do not quit their jobs when they go on strike. Unless the strike is in violation of the law, they are still legally employed and entitled to return to their jobs upon the termination of the strike. Even were it not for the law, the strikers are taking the action in order to secure some condition appertaining to the job, and it would be difficult to justify to them the proposition that they had resigned from the very jobs which they sought to improve. The purpose of the strike is to stop the operations of the plant, shop, or business concerned as pressure upon the employer. It would hardly be a strike, then, if the employees walked out, the employer hired a completely new staff or working force, and the business proceeded to function as usual. In order to keep the jobs open while the work is stopped, it becomes almost inevitable that the strikers inform both the public and potential takers of the jobs that a strike is in progress. This is why picketing is an integral part of virtually every strike. The picket is stationed somewhere near the strike-bound plant and ordinarily wears or carries some sort of placard which briefly states the essential circumstances of the strike. His primary purpose, of course, is to persuade other people not to enter the establishment as "strikebreakers." The word "persuasion" is subject to varying definitions, but persuasion by a picket is quite legal provided it is peaceful in the eyes of the court. Picketing is not a mere adjunct to the strike; it is an integral part of it. It exists because workers in the United States are free men who are entitled under the law to utilize the same types of pressure that the employer has at his command.

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## *Chapter 10*

### *THE DYNAMICS OF COLLECTIVE BARGAINING*

#### WHY ORGANIZE?

In December, in the year 1214, a group of the English nobility decided that they could no longer endure the grievances which they had suffered at the hands of King John. Pretending a religious pilgrimage, they assembled and swore an oath that they would redress those grievances. For some months thereafter Archbishop Langton and others attempted to bring about a compromise and to negotiate peace between the King and the nobles, but without success. Shortly after Easter, 1215, the rebellious lords marched on the City of London with a show of determined force. The King fled the City, apparently in fear that public opinion was not with him. Within a month he capitulated, recognizing that his own position was untenable without the collaboration of the nobility. At a grassy spot called Runnymede near Windsor, on the banks of the Thames, he signed the Great Charter, an agreement in which the rights of the nobles were conceded. Thus occurred one of the most significant collective bargains in the history of the Western World. It did not involve a labor dispute, that is true, but the pattern of collective bargaining, and the reasons for it, were clearly illustrated. The story further illustrates the fact that collective bargaining did not originate with labor unions. It is more nearly correct to say that unions arose as the necessary vehicle for the pursuance of collective bargaining.

Over one hundred and seventy years ago Adam Smith remarked that "in the long run the workman may be as necessary to his master as his master is to him; but the necessity is not so immediate."<sup>1</sup> The individual workman may threaten to withhold his labor unless the employer grants requested terms, but only in the most unusual case is the employer dependent upon that particular worker. He can deny the request or discharge the man. Other workers are usually available on short notice. A bargain between an individual employer and an individual worker is a specious bargain because the essential power of accepting or rejecting is in the hands of the employer. But when all the workers of one plant speak with one voice, their bargaining power may be on a parity with that of the employer. He can easily replace one man; it is not so easy to replace an entire working staff. It is primarily to provide this unity that unions exist.

But there is a further reason why unions increase the bargaining power of the workers. The individual craftsman may be skilled at his craft, but he is unlikely to be a skilled bargainer. Alone, he can know little about the conditions of the labor market or of the factors that determine wage rates and working conditions. He may be inarticulate in stating his position or in pressing his case. Indeed, he may even be unable to speak English. The employer, on the other hand, is ordinarily in possession of greater information and possesses superior bargaining skill. If he is a "small businessman," bargaining of one sort or another is his day-by-day occupation. If he is a big corporation, he is represented by a person who is selected for his bargaining talent and skill—an expert who devotes full time to the relations between the management and its employees. Only when the employees organize can they too be represented by a full-time expert who is skilled and informed. This explains one of the reasons why employees cannot be satisfactorily represented by another employee of the same firm. To achieve any bargaining power whatever they must be represented by a full-time and capable employee of their own. The other major reason

<sup>1</sup> *The Wealth of Nations*, Vol. I, Chap. VIII.



is found in the obvious fact that a person whose living depends upon the good graces of an employer cannot "speak up" to that employer. Employers sometimes object to dealing with "outsiders," as they call the union representatives who are not on their pay rolls. But it must be apparent that the union official is no more an outsider than is the attorney who represents the employer in court. He is a person, employed by the insiders, who possesses information and skill and who is selected to speak for the insiders.

Perhaps the classic example of extreme arrogance in the employer viewpoint is found in the statement made in 1902 by George F. Baer, then President of the Philadelphia and Reading railroad: "The rights and interests of the laboring man will be protected and cared for not by the labor agitators but by the Christian men to whom God has given control of the property rights of the country." It is proof that some progress has been made in the last half-century that such a statement could hardly be made seriously in public by a contemporary employer. The doctrine of the divine right of property is now untenable, and it is equally clear that workers can select their own representation better than employers can do it for them. It may be concluded that, although individual unions are often misinformed, misguided, or just plain perverse, the underlying principle of unionism is sound if the principle of democracy is sound. Unionism is not contrary to the idea of private enterprise; it is of the very essence of it.

### JOB CONTROL

Just as unionism inevitably grew as part and parcel of the American economy, it met with a resistance from employers which was fully as inevitable. Historically, the employer viewpoint has undergone a continual shaving down of the original proposition that the employer owns the shop and can therefore do as he likes with it. At first glance this allegation would seem to have merit. But upon closer inspection it is seen that the possession of property does not carry with it the unrestricted right to use it as the owner pleases. You may own a pistol, but

you are rigidly restrained in your use of it. You may own a home in town, but it is subject to dozens of ordinances. You may own a railway company and find yourself regulated in detail. You may own a factory, and the community may tell you that your smokestack may not emit the smoke of untreated soft coal. You may own a shop, and you cannot do as you please with your employees either. Certain of their rights are established by law; others are merely the manifestations of deep-seated human nature; while still others are conferred by the opinions of the community. The United States itself grew out of the rejection of arbitrary power in government, and it is inconsistent for an industrialist to assume the authority of a petty Louis XIV.

As was pointed out in Chap. 2, a worker quite naturally looks upon the job that he performs as "his job." He may have very little legal claim to it, but his psychological claim is very strong. He lives with it day after day; he gives the best part of his waking life to it. Its conditions determine the character of the life he leads when not on the job. In brief, it becomes the very center of his existence. It should not be surprising, therefore, that he should want some measure of control over the details of the job. It does not follow that he should have the sole control. That would simply reverse the abuse. There is, however, sound reason why he should be in a position to bargain with the employer over the sale of his labor.<sup>2</sup> And true bargaining cannot exist unless there is an approximate equality of bargaining power. This is the true meaning of a much-distorted phrase, "democracy in industry."

### THE UNION AND ITS MEMBERS

It must not be assumed that a union adequately voices the opinion or the desire of each of its members in every instance. In so far as it is democratic, it represents only the majority. And

<sup>2</sup> See A. M. Ross, "Union-Management Relations and the Wage Bargain," Pacific Coast Economic Association, *Papers*, 1948, and F. H. Harbison and R. Dubin, *Patterns of Union-Management Relations*, 1947.

wasted effort can be saved. And, being human, he may be lazy or incompetent and may imagine all sorts of unreal injustices. He may misunderstand the terms of the union-management agreement under which he is working, or he may fully understand it and be aware of receiving unjust deserts under that agreement. All the multitude of possible situations go to shape the attitude of the spokesmen for both labor and management.

These representatives, in turn, are on constant guard against the encroachments of the other side and are constantly formulating proposals for revising the agreement. When the agreement expires, both sides meet to consider proposed revisions unless it has worked so smoothly that it is agreed to continue it in force unchanged. In most cases the negotiations are relatively harmonious, marked by concessions and compromises. Where no agreement can be reached, however, a work stoppage is likely to result. The end of a strike or lockout, won by one side or the other, is accompanied by further negotiations, and immediately the planning or the accumulation of items begins in preparation for the following year. All the stages in this cycle are parts of the process of collective bargaining.

Strikes are newsworthy; they interest the public and therefore are reported in the newspapers. The peaceful settlement of a dispute or the conduct of routine negotiations, however, are private matters without spectacular interest and are not reported in the newspapers. From these facts the general public is sometimes led to the erroneous assumptions that labor-management relations and strikes are synonymous terms, that unions exist chiefly to strike, and that union leaders are inevitably greedy and violent. As a matter of fact, however, an overwhelming majority of the countless union-management negotiations are conducted with amity, dignity, and decency. Since most of them are not known outside the conference room, there is no record of the number of negotiations in the United States in a year. But they are constantly proceeding in hundreds or in thousands of places, and only the ones that break down are known to the public. Good will and peaceful negotiations are the rule rather than the exception.

## THE UNION SPOKESMAN

The titles and duties of union officials vary with different unions and under different circumstances. It would be impossible to describe here the details of each union office. Many are not directly involved in collective bargaining; others are involved in a temporary sense only. Organizers, for example, are experts in the organization of new locals. They are directly concerned with the bargaining instituted by a new local but then move on to new fields.<sup>3</sup> Again, those members of the union staff who work in an Education Division are not directly involved in the continuing process of collective bargaining. The following paragraphs will omit the exceptional cases and will describe the typical or more common union offices which actually represent the workers in their dealings with the employers.

In a big business establishment, the small matters of union concern which arise in the course of each day's work are usually handled by a shop steward. This is the lowest active office in the typical union. The steward works for the employer as one of the regular employees and devotes only occasional time to union business. He is posted on the details of the labor agreement and on union policy and is always present on the job in the plant or shop. Other employees, if they have real or fancied grievances, go to him, and he makes an effort to straighten the matter out with the foreman or superintendent. Above him in the union hierarchy is the business agent (sometimes called "walking delegate") who is a full-time employee of the union itself and who takes up those questions which have not been settled on the spot by the steward. Where there is no steward, the business agent takes the initial action on grievances.

The business agent is an officer of multitudinous duties. He helps the members find jobs; he adjusts the grievances which arise on the job; he has primary responsibility for relations with other unions; he must frequently serve as an organizer and must constantly seek to strengthen his union; he watches over

<sup>3</sup> The work of an organizer is vividly described in Robert R. R. Brooks, *When Labor Organizes*.

the agreements with the various employers and participates in the negotiation of new agreements. In addition he must maintain good personal relations with the members if he expects to be reelected to his office. In brief, he must be ready at a moment's notice to serve the membership in any way which they may require. Success as a business agent often leads a man into the higher realm of union leadership; failure returns him to the bench or machine. Ordinarily he leads a difficult and tumultuous life, always precarious and usually exciting. In a very real sense, the business agent is the "keyman" of the American labor movement, and the backbone of its organization.

In the small local there are normally a number of officers, of whom the secretary and the president are the most important, usually in that order. These officers may be unpaid or paid a small amount for part-time work. The secretary is often carried in office year after year and forms a central point around which the union business revolves. Occasionally the president occupies this key position, but often his is a partly honorary post. One of these may perform many of the duties that were ascribed to the business agent in the preceding paragraph, but nearly always the body of officers serves as a board of union strategy.

In the larger locals or when a large corporation is to be dealt with, regional or national officers may enter the negotiations. In the United Auto Workers, for example, a regional director takes charge of the union's relations with a large manufacturer. In the United Mine Workers the international president takes personal leadership in the over-all negotiations with the mine operators.

It will readily be seen that there are many thousand union officers of all ranks in the United States. There is no reason to believe that in character and ability they do not represent a fair cross section of the population of the country. Among them are individuals who are competent and incompetent, honest and dishonest, intelligent and stupid. But, like people as a whole, their intentions are generally good, and they possess the normal human decencies. Countless numbers of them are working hard and fairly, trying to do a decent job. Most union jobs are not easy, and few of them are highly paid so that many a man makes serious personal sacrifices in order to serve his fellows. Racketeers

and crooks have crept in, of course, as they have in other segments of the population, but they are not characteristic or dominant. Most union officers are ordinary human beings trying to do their jobs.

It is this which causes much of the misunderstanding of union officials in the minds of employers and the general public. When a business agent "does his job," he inevitably runs counter to some plan or desire of an employer. After all, one of his major duties is to outbargain the employer. He thus may appear to be cantankerous or unreasonable and accordingly receive the opprobrious epithet of agitator. It must be remembered that the business agent, in order to hold his job, is expected to do something occasionally that tangibly improves the conditions under which the members work. If he shows too much concern about the welfare of the employer, he is likely to be voted out of office on short notice. This fact inevitably conditions him when he appears across the negotiating table from the employer. And the employer who best understands this is likely to have the most harmonious labor relations.

### THE EMPLOYER SPOKESMAN

The negotiation of a labor agreement is a very important event in the conduct of any business. Wages typically constitute from 20 to 40 per cent of the total expense of operating a business, and the establishment of wage rates is never a minor matter in the view of an industrial manager. Accordingly, the task of negotiating with a union is seldom relegated to a minor official of the management. When the total body of workers is involved, it is not unusual for the president of the company, himself, to take an active part in these matters. In a small business, the proprietor or manager usually assumes the duties of collective bargaining. In the large corporation, there is frequently a vice-president who makes this his chief concern. However, the day-by-day grievances normally go first to a foreman or shop superintendent. If not settled at these lower levels, they may work up to the head of the firm where final power resides.

Most large concerns now maintain both a Personnel Division and a Labor Relations Division, but with both under the direction of one head. The personnel staff is concerned with the relations between the company and the workers as individuals. It handles the employment office, record keeping, discipline, discharges, the allocation of vacation times, and a host of similar matters. The labor-relations staff is concerned with the relations between the company and the union or unions concerned and is therefore responsible for the negotiations leading up to a collective-bargaining agreement. Although individual problems frequently move from the personnel to the labor-relations branch, it has thus far been unusual for a personnel manager to become labor-relations director. Persons in the latter post have been selected in the vast majority of cases from the staff of an operating division of the company. The prime reason given for this has been that only the operating officials can know the true conditions in the shop and can appreciate the full consequences of any concession which might be made in the bargaining process. Undoubtedly this argument has validity, and the practice will no doubt continue. However, many operating officials are unfortunately quite ignorant of the traditions and practices of collective bargaining. In such a case the executive is likely to go into the negotiations with a staff, including the personnel director. He still must make the decisions, but he has the benefit of advice and information given by experts in the various matters taken up.

Just as the business agent is responsible to his membership, so is the employer spokesman responsible to the management. He would indeed be unnatural if his chief motive were to grind the workers beneath his feet. But it is quite natural for him to think of the company's interests at every step of the negotiation. That is his job; it is what he is there for. If he fails repeatedly, he is likely to be dropped from the staff of top management. On the other hand, if he is a conspicuous success, his fortune is made since his career depends upon his skill at bargaining—and skill in labor relations is measured only in terms of results.

## LAWYERS IN COLLECTIVE BARGAINING

Many employers and occasional unions place the task of conducting collective bargaining in the hands of lawyers. There are several advantages in this. In the first place, the principal negotiations are conducted for the purpose of drawing up an agreement, which is a kind of contract. Legal training assists the negotiator in anticipating all the possible contingencies and in drafting the agreement in explicit form. Further, a lawyer with courtroom experience is better prepared for oral argument and debate. He may be adept at confusing issues and at extracting statements from unwilling witnesses. His advanced college education may enable him to outwit a business agent who may or may not have completed high school. The third advantage lies in the current complexity of labor law. The increasing number of statutes, court decisions, and administrative rulings relating to labor have become so vast that few negotiations can be conducted without a knowledge of the law and its application to a particular problem. Only a lawyer who specializes on labor law can keep abreast of this intricate subject. Negotiations conducted by non-lawyers, therefore, often result in contract provisions which must later be thrown out as contrary to law.

On the other hand, it must not be assumed that lawyers are an unmixed blessing in labor relations. In the first place, the negotiators are not engaged in writing a conventional contract. A labor-management agreement must be written in language understandable to the workers in the plant. It is written not only in simple English but often in the vernacular of the industry. Each trade has its own jargon, and the workers, untrained in law, can understand their own but not the lawyers' jargon. A legalistic sounding agreement can defeat its own purpose and can increase, rather than decrease, the number of disputes arising out of its interpretation. Secondly, the courtroom skill of the lawyer in dazzling his opponents into concessions may yield a contract satisfactory to both sides at the time, but it may be neither permanent nor a harbinger of peace. Before the ink is dry it may start to be a source of controversy, and either side



will lay plans to effect a change. Clever moves are often successful in the courtroom if the opposing clients have no further occasion to do business with each other. But employers and unions must remember that the signing of an agreement is the beginning of a new year of their daily relationship rather than the end. Clever tricks put across in the process of negotiations are never permanently successful and never lead to harmonious labor relations.

Probably the best solution is to leave the conduct of the actual negotiations and of the actual writing of the agreement to those who specialize in labor relations, but with lawyers at their sides to post them on the application of labor law. Usually it is not necessary for the lawyer to be present throughout the negotiations. He can be consulted at the end of each day's work. If he is present, he should act as counsel rather than as advocate.

### THE PROCESS OF NEGOTIATION

The negotiation actually begins when the representatives of the two parties meet. An office furnished by the management is usually most convenient to both sides, although "neutral territory" is sometimes chosen. Usually, written statements of proposals have been submitted in advance, but this practice is not universal. If the negotiations are a part of the process of formulating the first agreement between a union and an employer, agreements between other similar unions and employers provide a natural basis upon which to begin conversations. If they arise out of the fact that an existing agreement is to be renewed or altered, the old agreement, together with proposals for changes, sets the agenda. If they are a step in the adjustment of a grievance, a written statement of the latter, to which has been appended the relevant documents, serves as the subject of discussion. In any case, the subject matter of the negotiations must be clearly defined and delimited.

The extent to which the employer representatives may make concessions is often limited by an over-all policy of the parent corporation, if any, or by the restrictions imposed by an employers' association. That of the local union is frequently limited

by the constitution or by-laws of the international or by policies established by international or regional officers. Ordinarily, both of these are partly understood by the opposing side so that negotiations do not start from a "blank slate." If, as is increasingly common, the spokesmen for both sides have been in more or less continuous relationship with each other and have bargained with each other before, the mere fact of acquaintanceship, whether on a friendly or unfriendly basis, gives each an advance clue concerning the ideas and techniques of the other. As a result, the typical negotiation opens with both sides possessed of a fairly complete understanding of the situation and the prospects.

When the negotiators assemble, there are present at least a spokesman for the management and one for the union. Seldom, however, are these two alone unless the matter at hand is of slight consequence. On the management side of the table there are seldom many persons. The spokesman himself usually has full instructions and complete authority within specified limits. For advice he may be accompanied by a lawyer or the personnel manager or some other member of the official staff who can contribute information regarding the questions to be discussed. On the labor side of the table, however, there is likely to be a large delegation. The union spokesman is unlikely to have as wide a range of authority as the management spokesman, and he is normally accompanied by a negotiating committee and by the various officers of the union. A democratic union cannot be so closely integrated as the management of a business establishment, and the actions of its representative must ordinarily be ratified by the union membership in a meeting. It is therefore desirable that the different groups of labor which comprise the union have someone present at the negotiations who can hear all the argument and can explain to the members the reasons for certain shifts in policy or for strategic retreats. Employers frequently complain of the delays in the negotiatory process occasioned by the presence of a large and unwieldy committee on the union side of the table. The alternative, however, would often result in an agreement that would later be rejected by the union meeting, with the consequence that negotiations would need to be done all over again. Management makes no pretense of democracy in

its policy making; hence it can act expeditiously and with finality. A union, however, is the representative of large numbers of persons and must be democratic if it is to perform its function. Democratic procedure appears slow but is usually the most effective in the long run.

The representatives of both sides having assembled, the discussion of the agenda begins. It is this discussion which is the very heart of collective bargaining. It is going on somewhere in the United States at any given time, as there are at least 50,000 labor-management agreements in the United States. Probably a third of these are reopened for negotiation every year, others every 2 years, and still others at indefinite intervals. The number of grievances that are negotiated each year is quite unknown, but must run into the many thousands. These various negotiations are the determinants of the conditions under which men and women work and of the labor costs of American industry. This is why the business agent and the local union secretary are really the most important members of the labor hierarchy—much more important than the more publicized international presidents. It is at the bargaining table, and not on Capitol Hill, that the worker is really represented.<sup>4</sup>

These fragmentary but all-important negotiations are conducted in as many ways as there are people who conduct them. Spokesmen (on both sides) may be blunt and bluff; they may shout and pound the table; they may be stubborn or intolerant. Or they may be suave, smooth, and quiet, relying on wits rather than on mere noise. In many, if not most, instances a negotiator demands more than he expects to get so that he can compromise and concede and still win his basic proposals. Others state their positions exactly and mean exactly what they say. Since the opponent is obliged to guess which procedure is being used, the process bears some likeness to a poker game. Nominal demands

<sup>4</sup> In occasional unions, elected and appointed officers do not participate in negotiations, this function being handled by a committee devoted exclusively to the purpose. This is done because of the expectation that a business agent or secretary, with his eye on the votes of his constituents, may lack sufficient independence to negotiate successfully. In the vast majority of unions, however, regular officers participate in negotiations.

are laid on the table, but each side is constantly trying to ascertain which are the real demands and which are mere padding for bargaining purposes. Neither side knows just what information is possessed by the other, and neither side can anticipate the tactics of the other. As a battle of wits and facts, collective-bargaining negotiations probably represent the spirit of "free enterprise" at its best. They are the very essence of a competitive economic system.

### NEGOTIABLE AND NONNEGOTIABLE TOPICS

Before proceeding to a description of the actual matters with which negotiators are concerned, there are several aspects of collective bargaining which are basic to all negotiations and which must first be discussed.

The day-by-day association of labor and management raises an infinite number of questions regarding which negotiations might occur. However there are some items upon which neither party will negotiate because they consider them nonnegotiable. For example, a union will not discuss the relinquishment of its status as the collective-bargaining representative of a group of workers. To illustrate, assume a plant in which an AFL union has for many years represented the employees. Further assume that another union, independent or CIO, has approached the employer with the proposal that it be granted the contract instead. The employer would be foolish to expect the AFL union to negotiate on this question. It would be like proposing to negotiate regarding the ownership of a piece of land with a man who already possesses clear legal title. And so also with the employer's right to determine the fundamental nature of his business. A street-railway company will not negotiate a union proposal that it convert its capital and go into the business of producing sheet aluminum. Neither side can or will negotiate over those questions which are fundamental to its existence.

Each side conceives of itself as being endowed with something strongly resembling the sovereignty of nations, that is, the right of existence and hence of self-control over those policies

which are necessary to continued existence. A nation does not willingly surrender its sovereignty. If it is strong enough it maintains it by military force; if it is weak and friendless it passes out of existence. Unions and managements normally possess an analogous feeling of sovereignty, and the results, also, are often analogous. The sovereignty of unions is summed up in the concept which the Bureau of Labor Statistics calls "union status," that is, the contractual terms under which certain security for the existence of the union is established. The sovereignty of the company is encompassed in the time-honored term "management prerogatives," which refers to those powers which the management must possess in undisputed and undivided form as a necessary basis for the conduct of business. The principle that each side has the undisputed right to exist, and therefore to take such legitimate actions as are necessary to the maintenance of existence, is not subject to question on either legal or moral grounds. But trouble arises out of the fact that the boundary line between union status and management prerogatives is not, and cannot be, clearly drawn. When does a union demand impinge upon management's sovereignty? When does a management policy imperil the rightful powers of a union? No definite answer can be given to either question. In terms of theory there is no guiding principle; in terms of practice there is nothing to be learned from experience except that circumstances differ in both time and place. Although the questions are unanswerable in the present state of knowledge, the attempt to answer them in the expediency of collective bargaining has brought about the majority of labor disputes and work stoppages which have occurred in recent years. With the passing of time it is probable that the problem will be narrowed and will become more nearly susceptible to solution. Perhaps, when the similar problem involving the sovereignty of nations is solved, the principles then developed can be applied to labor relations, and until both are solved there will be permanent peace neither between nations nor between unions and management.

## THE BARGAINING AREA

Just as a union will refuse to bargain about its own existence, the area of its bargaining is limited to those workers whom it is authorized to represent. It might seem very easy to determine which union represents which workers by the simple expedient of taking a vote. But it is not easy; the multiplicity of interests among different groups of workers makes it exceedingly difficult to determine a proper voting unit. The problem may be best expressed in a few illustrations which will reveal its complex nature. Imagine a business establishment employing 250 workers, divided equally among five different crafts. There are 50 workers each in crafts *A*, *B*, *C*, *D*, and *E*. These workers are asked to choose among five craft unions for their representatives and to select one industrial union to represent them all. Imagine three different possible results of the vote.

	Case 1		Case 2		Case 3	
	Craft	Industry	Craft	Industry	Craft	Industry
<i>A</i>	40	10	50	0	26	24
<i>B</i>	40	10	50	0	26	24
<i>C</i>	40	10	0	50	26	24
<i>D</i>	40	10	0	50	26	24
<i>E</i>	40	10	0	50	20	30
Total . . . .		50		150	124	126

In Case 1, if the voting unit is the craft, then the five craft unions will win the election, and each will represent the 50 workers in that craft. But if the entire working force is taken as the voting unit, the industrial union, with 50 votes to 40 votes for each craft union, will win with a plurality and will represent all workers. And it will win in spite of the fact that it receives a small minority of votes in each craft. In Case 2, if the entire plant is taken as the unit, the industrial union will represent all

workers even though not a single person in crafts *A* and *B* voted for it. If they are both strongly unified in skill and custom, they will resent having their own unanimity sacrificed at the altar of a mass majority. In Case 3 it is assumed that the workers are first given the opportunity of a preliminary vote to determine whether the final vote should be taken on a craft or industrial basis. In this case a simple majority of the members of four crafts have elected a preference for a vote on a craft basis. In the fifth craft a slightly larger majority prefers the entire plant as the unit, and this fifth craft, representing only one-fifth of the total working force, determines the result of the entire election. In each case, if the craft lines were indistinct, a little skillful gerrymandering could complicate the question still more.

The National Labor Relations Board, in conducting representation elections, has run into this difficulty hundreds of times, and no matter how it determines the electoral unit the losing group seems to have a valid objection. Its solution—the only practical one available to it—is to seek to make its determination according to the customs of the industry. Its assumption that the practice of the past has some inherent validity may be logically erroneous, but in practice it seems to be inescapable. It is arbitrary but realistic. Either by Board action or by agreement between the parties, this matter of representation must be settled before the negotiation of other matters can begin.

Another aspect of representation is the geographical area involved. In some industries it has long been customary for the union to bargain on a nationwide, region-wide, or industry-wide basis. In soft-coal mining, for example, representatives of the United Mine Workers and representatives of the operators meet to negotiate an agreement covering the major part of the industry in the United States. Again, the International Longshoremen's and Warehousemen's union negotiates with the Water-front Employers' Association of the Pacific coast for all major American seaports on the Pacific. Where a single employer is a large corporation with branches in various parts of the country, one union may deal with the single employer in making agreements effective in all branch plants. Many large corporations have opposed this, even to the extent of supporting proposed leg-

islation seeking to outlaw the practice, largely because it tends to give the union a strength commensurate with that of the employer. Some unions have opposed it because it yields a universal but mediocre agreement, imposing upon all locals a series of provisions which may be less desirable than certain favorably placed locals could secure through separate negotiations. Legislation is not a satisfactory approach to the question since the desirability of bargaining for a large physical area varies with the structures of the industry and of the union, and no blanket rule which is always equitable can be applied. The determination of the proper physical or geographical area is best left to collective bargaining itself.

### BARGAINING AND BUSINESS COSTS

All the benefits secured for workers as a result of negotiations are also to be considered as business costs. Wages are income to the workers but expenses to the management. Vacations on pay, sick leave on pay, the cost of uniforms or equipment, the employment of workers considered superfluous by the management, the bookkeeping costs of dealing with the union, and dozens of other matters which may be dealt with in an agreement will constitute costs in the conduct of the business. However, it must not be assumed that an increase in over-all costs necessarily implies an increase in cost per unit of output. An accompanying increase in the volume of business may more than compensate for the apparent increase in costs. In the case of one newspaper, for example, circulation was increased fivefold. This increase enabled the management to achieve a reduction in the unit labor cost by more than two-thirds. Wages could have been trebled without reducing the profit of the company, but they weren't.<sup>5</sup> The explanation of this phenomenon lies in the fact that there is no direct correspondence between labor costs and total costs. The total costs of production include those for labor, for materials, and for "overhead," and the relative importance of these

<sup>5</sup> U. S. Bureau of Labor Statistics, "Productivity of Labor in Newspaper Printing," Bulletin 475, 1929.



varies widely among industries and at different times in the same industry. The percentage distribution of these three shares of total cost in one great manufacturing corporation showed the following change from the boom year of 1929 to the depression year of 1933.

Cost of	1929, per cent	1933, per cent
Labor. . . . .	14	7
Materials . . . . .	52	31
Overhead . . . . .	34	62

It is apparent that a change in the cost of labor would have had a very different effect upon the company in 1933 than it would have had in 1929. Taking a large number of industries, labor costs comprise anywhere from 10 to 60 per cent of total costs.

When labor costs are a large proportion of the total and where there appear to be no possibilities of reducing other costs, an employer will show strong resistance to any increase in the former, whether it be in wages or in other ways. When the reverse conditions exist, the employer may show much less resistance to pressure. And since business costs are significant only in their relation to business receipts, it follows that the nature of collective bargaining is both a cause and effect of the conditions of business enterprise. It must be emphasized that collective bargaining never takes place in a vacuum; it is tied to a multitude of threads extending into all parts of the economy, and pressure works both ways on every thread. It is buffeted by every economic wind which blows and some of the zephyrs which it sets in motion grow to become tornadoes.

### UNION-MANAGEMENT SOLIDARITY

When an employer finds himself unexpectedly arrayed on the side of the union, he is unlikely to make any public statement of the fact. Nevertheless the whole process of collective bargaining is occasionally confused by precisely this situation. As an

illustration of the way in which this can occur, assume an industry in which various competing companies are located in different parts of the country. Assume also that all are unionized save one, and that the union scale of wages is markedly higher than the rates paid in the single nonunion establishment. This means that the nonunion firm has a competitive advantage. Either one of two courses will remove this differential: the reduction of the union scale or the adoption, by the lone unorganized plant, of the union scale. Since the first alternative will meet strong resistance from the union and possibly cause costly strikes, it is to the interest of the majority of firms that the other firm be unionized. Employers may contribute directly to the union's organizing fund or may do so indirectly through the granting of concessions which will strengthen the union. The result is an alliance between a group of employers and a union in their mutual interest.

Union-management alliances may also be formed to maintain a high price to the consumer. The union may agree to embarrass any new firm that attempts to establish itself in the area, either by denying it access to the labor market, by demanding impossibly expensive working conditions, or by heckling it with "goon squads." This guarantees the capacity of the existing firms to maintain a monopoly price for their services or products. In exchange for the union's help in sustaining the monopoly, the managements bind themselves to pay a commensurately high wage rate. This device, which is a near relative to racketeering, pleases everyone but the consumers, but consumers are unorganized and express their will both slowly and imperfectly.<sup>6</sup>

When a union and a company are negotiating a mutually beneficial conspiracy, designed to injure another company, another union, or the consuming public, they are engaged in collective bargaining but under the influence of unusual forces. This naturally changes the whole atmosphere of the negotiations and eliminates much of the usual animosity. The situation also imposes more secrecy than is customary, and the principal results are unlikely to appear in the written agreement.

<sup>6</sup> For an account of a device of this sort which functioned with unusual efficiency, in Seattle, Wash., see Richard A. Lester, *Economics of Labor*, p. 151.

## THE JARGON OF THE TRADE

Arising as it does out of everyday life, collective bargaining has brought specialized meaning to everyday language. Men from the mines, the mills, and the shops, whether they be managers or workers, speak the language of their work. Since this language comes naturally to the conference table, a written transcript of the proceedings is unlikely to be commendable from a literary standpoint. But it is seldom dull and flaccid. On the contrary, it is pitched high with rough eloquence, with searing wit, and with picturesque analogy. Opposing spokesmen who are really quite friendly at all other times may abuse each other with the most insulting terms imaginable and yet take no personal offense.<sup>7</sup> This is often quite disconcerting to the inexperienced newcomer in collective bargaining.

Out of these experiences has grown a vernacular, or jargon, of labor-management relations. Since it must be understood by the students of labor as well as by the participants, the present volume has used the jargon terms wherever they seemed suitable and have been used with sufficient generality to have become a permanent part of the language.<sup>8</sup>

## COMMITMENTS AND FACE SAVING

The jargon is often more violent in sound than in intent; it gives an exaggerated effect to the mind of the uninitiated onlooker. Stories of *demands* and *counterdemands*, of *last-ditch fights*, and of *breaking an (unmentionable) opponent* suggest a vehemence, unreasonableness, and bitterness which are usually much less than the terms imply. But the free use of strong language sometimes commits a spokesman for one side or the other to a position that he later regrets. If he is obliged to retreat from

<sup>7</sup> For amusing illustrations see the delightful article by Dexter M. Keezer, "The National War Labor Board," *American Economic Review*, XXXVI (June, 1946).

<sup>8</sup> An excellent glossary of the principal labor terms is found in Florence Peterson, *American Labor Unions*. See also D. Yoder, and others, *Industrial Relations Glossary*, University of Minnesota Press, 1948.

that position he may suffer a loss of personal prestige—perhaps even his job. It is obvious, then, that if one side is obliged to retreat the other side will be wise to offer a face-saving concession—something to retain the good will of the vanquished. To demand the full pound of flesh is not conducive to harmonious relations in the future.

By the same token, it is unwise to make flamboyant promises or threats which cannot be supported. This is the reason it is usually more difficult to settle a dispute which has reached a stage of strike and violence, with public insults and recriminations, than to settle one which has remained at a dispassionate level. Each participant must remember that his prestige is a long-run and not a short-run affair and that face saving is a very important matter to his opponent.

Above all things, the success of bargaining depends upon the good faith of the bargainers. Smart tricks defeat their own ends, and dishonesty at any step in a continuous relationship cannot remain hidden. Each spokesman has his job to do, but he does not do it well unless he is sincerely seeking a solution acceptable to both sides.

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## *Chapter 11*

### *THE LABOR-MANAGEMENT AGREEMENT*

#### THE CULMINATION OF NEGOTIATIONS

The most important single moment in the continuous process of collective bargaining is the moment when an agreement is signed, for that is the moment which signifies the completion of one stage in the relations of the two parties and the beginning of the next. It usually represents the culmination of a process of negotiation, and even though one party may feel that it has struck an unhappy bargain, it has at least agreed to abide by it for a stated period of time. The agreement itself does not possess all the attributes of a legal contract, but in essence and in spirit it is a contract and is often referred to as such.

Some of these agreements are long and detailed and make provision for every contingency. Others are brief and include only the general principles under which the parties are to operate together. The length and minuteness of the agreement will be determined chiefly by the past history of the relationship between the parties and by the degree to which they have confidence in and understanding of each other. Whether long or short, the fundamental requirement of a good agreement is clarity. Contradictory phrases and obscure terminology are certain to lead to subsequent controversy, indicating as they do a failure to secure a complete meeting of the minds.

Since the agreement is of such fundamental importance, it is necessary to describe in some detail the principal matters which are most often the subject of negotiation and which become crystallized in contract form. The possible topics are practically infi-

nite in number so that only the more common or typical sections will be described and discussed here.<sup>1</sup>

### THE PREAMBLE

At the beginning of an agreement there normally occurs a statement to the effect that the signatory parties intend to abide by the terms which follow. This much is simple and subject to no controversy. Of more immediate importance is the need for stating in the preamble precisely who the parties are, and this is not always so simple as might at first appear. On the one hand, it must be clear which union or part of a union is participating in the agreement. There have been a few instances when an international union spoke and signed for a local when it did not have the power to do so or when a local signed although its charter required the approval of international officers. Such an agreement is valueless. It must be made explicit that the properly authorized unit of the union is participating in the agreement. On the other hand, the participating management must be identified. For example, the General Motors Corporation might conceivably sign an agreement obligating all its subdivisions, or perhaps only its Chevrolet division, or even a certain plant within its Chevrolet division. Whichever is suitable must be stated so that no misunderstandings can later arise.

Occasionally dispute has arisen over the proposal by a union that the company bind not only itself but its successor in the event of the sale of the property. This is legally possible but presents complications which lead the management to resist the inclusion of such a provision. Ordinarily the union is provoked into making the demand because of suspicion that the company will seek to evade the agreement through a spurious sale to itself under another name. Unions are also interested in this provision when dealing with a "fly-by-night concern," in which case the union could have no stability without some expectation of continuity in its employment relationship.

The introductory section should also specify in detail the exact

<sup>1</sup> The reader interested in greater detail is referred to the useful manual of Leonard J. Smith, *Collective Bargaining*.

group of employees represented by the union and covered by the agreement. In few instances does one union represent *all* workers in an establishment. A line must be drawn between an uncovered managerial staff and the covered workers, and particular job classifications may be included or excluded. In the negotiations the union may seek to extend its influence by bringing in groups not previously represented by it; the management may attempt to weaken the union by excluding some workers previously included in the agreement. Exact boundaries must be determined and agreed upon before discussing the remaining issues.

### UNION STATUS

By the act of signing an agreement with a union, the management recognizes the union as the bargaining representative of a specified group of workers. This recognition will be based upon the acceptance of the proposition that a majority of the relevant workers are members of the union and desire to be represented by it. The mere existence of an agreement, therefore, is tangible evidence of union status. But status may take a number of forms, and the normal agreement specifies in detail the exact type of status which is to prevail.

Prior to the effective date of the Labor Management Relations Act of 1947, the contractual "closed shop" was provided in many agreements. Of all workers who in January, 1947, were working under written agreements, approximately 33 per cent were under closed-shop provisions. Under that arrangement, the management agreed to employ none but members of the union concerned and not to retain on the pay roll any workers who for any reason discontinued their membership in the union. To the union officers this had the obvious advantage of maintaining membership without the expense and effort of persuading workers of the benefits of the union. It also guaranteed that, when workers were to be employed, union members would have a first chance at the jobs, thus rendering the union more attractive as well as giving it a greater degree of control over the supply of labor.

Many employers disliked the closed shop on several major grounds. Most common was the argument that it restricted their



freedom to employ the applicant who was in their judgment most suitable but who might not be a union member. Another objection was that the closed shop granted such strength to a union that its bargaining power might exceed that of the employer. And the latter could not be convinced that he should voluntarily bring about such a situation. A few employers, on the other hand, were conspicuous in advocating and defending the closed shop. They argued that the more secure union becomes less militant and easier to deal with, that the arrangement leaves the responsibility for discipline on the shoulders of the union officials and thereby relieves the employer of expense and responsibility, and that it terminates any danger of a shutdown attributable to a jurisdictional fight between the presently recognized union and another union trying to supersede it. Others accepted the closed shop on the ground that it placed upon the union the duty of furnishing employees when needed, thus making it unnecessary for the company to operate an expensive employment office.

In view of the wide variety of opinions held on the subject, it seems apparent that the merits and demerits of the closed shop actually depend upon the circumstances of particular cases. Although the device has been outlawed by Federal legislation in the United States, it seems possible that the law will eventually be altered, since the matter is not really suitable for legal or judicial determination, which serve only to increase the tensions without solving the problems.

A modification of the contractual closed shop which is generally banned by the same legislation (the Labor Management Relations Act) is known as "preferential hiring." This simply means that management, in employing workers, will give preference to union members. Also under the limitations of the statute is the device known as "maintenance of membership." During the Second World War, this was ordered in many agreements by the War Labor Board, and by January, 1947, about 25 per cent of all workers under agreement were under this plan. This is not in any sense a closed shop since it does not require anyone to join a union. It does provide that all persons in the employ of the company who are, on a specified date, members of the union

shall maintain that membership for the duration of the agreement, under pain of dismissal from the job.

Permitted under circumstances by law is the "union shop." The circumstances are the approval of the employer and a majority vote of all eligible employees, the election to be conducted by the National Labor Relations Board. This does not require the employer to hire union members only but does require all employees to join the union within a period of 30 days after the date of their employment. Should they fail to do so, the employer agrees to discharge them.

The most important defense of the union shop is that all workers who benefit from the activities of a union should help in the financial support of the organization that benefits them. Assume union dues of \$2 a month, and assume that the activity of the union results in a dollar-a-day wage increase for all workers. Union officials argue, with considerable justice, that all the workers are under an obligation to pay the dues which made the wage increase possible. In the illustration, which is a moderate rather than a fantastic one, the individual worker could pay 1 month's dues out of the increased earnings of only 2 days. In the vernacular, workers should "pay their share of the freight rather than ride free." It must be conceded that the principle so advocated is quite consistent with the principles and practices of democracy. All property owners pay school taxes, whether or not they have children, as a contribution to the public welfare. And in democratic politics, the partisan minority that loses an election is thereafter represented by the spokesman for the majority and is not relieved of the obligation to pay taxes for the salaries of the officials against whom it voted. The same principle is upheld by medical and bar associations in which membership is for all practical purposes a condition of practicing the profession.

In a few instances employers have conceded no union rights beyond recognition and negotiation but have agreed to what is called "encouragement of union membership," or "harmony clause." This is essentially passive on the employer's part, but recognizes his willingness to permit union organization, and perhaps authorizes the union to post notices on the company-owned bulletin board, and sometimes other minor gestures of good will.

Unions have sometimes been obliged to accept this first small step, but they never accept it as their goal.

Simple recognition by the employer may be either one of two kinds: "exclusive bargaining" or "bargaining for members only." In the first, the employer agrees to a proposition that the union represents all workers in the bargaining unit whether or not they are members of the union. In such an instance, the only way in which a worker can participate in his own representation is to join the union. It is based on the doctrine that the majority may rule and stabilizes industrial operations by reducing interunion friction and rivalry. In the second instance, a union that has no recognition except the right to bargain for its members only is normally a minority group and seldom possesses effective power. This is the lowest rung on the ladder of union status; it is neither common nor significant. Below it is the great vacuum known as the "open shop," in which a union has no standing whatever and in which there can be no labor-management agreement whatever.

The spokesman for the union may insist upon a clause permitting its members to respect picket lines established by other unions. If so, the clause must be explicit and distinguish between the support of unrelated "sympathy strikes" and the refusal to pass through direct picket lines. Although employers may not be happy about such a clause, they are usually inclined to recognize the fact that the workers cannot be forced to break strikes, that respect for picket lines is a firmly established tradition, and that therefore their formal opposition would probably be useless. Since the workers could be expected to adhere to the tradition anyway, the only merit in its inclusion in a written agreement lies in the fact that the clause would absolve the union of charges of violating the agreement should the situation arise. In this sense such a clause provides for greater orderliness in contract drafting and possesses merit. But it must be carefully drawn, and agreement on its terms is not achieved simply.

### THE CHECKOFF

The checkoff is an arrangement whereby the employer collects the union dues from individual members and turns them over to

the union. This is legal when each worker authorizes the deduction in writing. That this is a widespread practice is attested by the fact that, in January, 1947, very nearly six million workers were covered by some variety of checkoff agreement. The arrangement is usually very advantageous to the union, in that it requires members to remain in good standing and avoids the expense of dues collection. Some union leaders, however, disapprove of it on the ground that it makes the life of the local officer too easy, resulting in softness if not lethargy. On the other hand, a considerable number of employers favor it, since it is an inexpensive addition to the cost of pay-roll accounting and yet eliminates the collecting activities of union officers at the plant gates. In industries where employees are transitory (as in canneries) or scattered (as in transportation), the check-off may be almost necessary to the life of the union, and the employer may prefer it to the disruption which might otherwise result from union efforts to round up the dues. Many other employers, however, are unwilling to "perform the union's work for it" and see no reason why they should actually assist in maintaining the strength of a union that they may dislike. In such cases, negotiations on this subject may become very bitter.

### MANAGEMENT PREROGATIVES

If in the negotiations the company spokesmen make any concessions on union status, they are likely to ask in return that the agreement contain a specific guarantee of management's rights. Such a guarantee is difficult to write without vagueness and will, of course, depend on the character of the business. One simple method is to reserve to management all powers not otherwise restricted by the agreement, but union officials are wary of this because they cannot feel sure that the terms of the agreement will properly care for unforeseen contingencies. In other cases, management itemizes those of its prerogatives which it suspects might be infringed by the union. This might include the right to discharge a worker for cause, to promote the most qualified eligible worker to a higher rank without interference, to determine the nature of the work and of the

machinery and equipment used, and to set the number of persons to be employed in each job classification.

Some of the proposals made at this point by the management may conflict with proposals that the union intends to make regarding later sections of the agreement, in which case a major controversy may develop. In actual fact, of course, the management does possess all powers not in conflict with the law and not conceded to the union and therefore should not need to itemize them. The most prevalent reason why employer spokesmen sometimes want a contractual statement of the company's prerogatives is that they suspect the union of having designs on some of them and want an agreement that can be used as an anchor in future bargaining. It is sometimes easier to get a new provision into a contract than to change an old one. Further, in the bargaining process management may be able to trade a concession in the prerogative clause for one in the union security clause, perhaps to the mutual advantage of both parties.

Since management considers its fundamental prerogative to be the right to operate its business, it often seeks a no-strike clause under which the union agrees to sanction no strikes during the life of the agreement. Prior to the Labor Management Relations Act, unions were generally willing to include such a clause and also a further provision that the management should have the right to discharge any workers who participated in any strike conducted in violation of the agreed terms. This was to prevent unauthorized, or "wildcat," strikes. Under the 1947 law, however, unions became liable for damages at court for jurisdictional or wildcat strikes, and to side-step litigation most unions have since refused to agree to a no-strike clause. This has been one of the unfortunate results of the law since it tends to reduce, rather than increase, the sense of responsibility on the part of union leaders.

## WAGES

Next after the question of union status, the wage terms are the most important part of an agreement and, where many job classifications are involved, may occupy a major part of the space.

In a few of the agreements covering great numbers of workers in a giant plant, there are thousands of job classifications, each with its special wage rate. Where the detail is so great, it has become customary to omit all these rates from the contract itself and to add them in tabular form as an appendix. Where locals are small and a union scale has become standard in the community, this standard scale may be referred to in the agreement itself without further reiteration.

The fundamental wage question is the determination of the base pay—the rate paid for “straight-time” work. When the negotiators take up this matter, they manifest all the pressures that were discussed at length in Chap. 5. At the conference table those forces come to bear with direct impact, and each side uses all the bargaining power it can marshal. Both sides present such statistical data as may support their arguments and usually attempt to discredit any statistical data used against them. Threats of strike or lockout are normally withheld to be used as a last resort, but they lurk unspoken behind the negotiations. Each side guesses how far the other side may go, which prolongs the process and often causes personal animosities. Sometimes the parties are in agreement but don’t know it until after long debate and even vituperation. For example, in one case a union demanded a wage increase of 10 cents an hour, but had privately decided to “settle” for 5 cents. The management had meanwhile decided that it would grant a 5-cent increase, but announced at the beginning of the negotiations that it would make no wage increase whatever. Hours of argument passed before they agreed on the 5-cent increase, and each side believed itself to be triumphant. This appears to be a mere waste of time but is of course essentially democratic and probably unavoidable. Similar incidents commonly occur in commercial bargaining over the price of commodities.

In recent years there has been an increasing tendency to inject the “productivity” argument. Management frequently contends that wages cannot be increased because the productivity of labor has fallen, and labor argues the contrary. Since it is usually impossible to prove either position, the disagreement

can wax furious, and there is little useful result.<sup>2</sup> After the storm which has been precipitated by this touchy subject has subsided, the basic wage rate will be determined as a result of the usual pressures.

In a few industries it has been customary to establish a "rate range" rather than a fixed and definite wage rate. A rate range is not a scale for various job classifications; it is a range from a minimum to a maximum established for the same job. For example, instead of stating that a particular type of worker is to receive \$1.25 an hour, a range would provide that this worker would receive a wage somewhere between \$1.10 and \$1.40 an hour. Quite naturally, unions object to a rate range if the determination of the actual wage of each individual is left solely to the management. They would certainly assume that most if not all workers would receive \$1.10, the few getting the higher figure being the pets of the management. Management has often argued in favor of such a flexible range on the ground that it provides an opportunity to reward the good worker and is therefore an incentive to efficiency. The fixed rate, they argue, puts a premium on mediocrity and gives no chance for the eager and diligent worker to get ahead. This criticism is often incomprehensible to the union spokesman, who is inclined to think in terms of group welfare and makes the correct reply that the diligent worker can be rewarded by promotion to a higher rank and that the range is therefore unnecessary. Actually, a range based on "merit" is little more than a subdivision of job titles permitting many little promotions instead of fewer real promotions in rank. In by far the majority of instances there can be no doubt that the straightforwardness of the fixed rate is an advantage. It eliminates many petty jealousies and countless controversies and suspicions.

The only type of rate range which is likely to be approved by unions is one in which increases are specified and automatic, usually based upon length of service. For instance, the range

<sup>2</sup> For an explanation of the difficulty of measuring productivity, see Chap. 5. Some of the violent debates on labor productivity and wages which have occurred in negotiations are reminiscent of Gilbert and Sullivan.

used for illustration in the preceding paragraph might be arranged so that a worker newly entering the job classification would start at the bottom of the range, \$1.10, and would receive a 5-cent increase every 6 months until the maximum of \$1.40 was reached. Such a scheme assumes that experience makes the worker more valuable to the company and that if he is not capable of improvement he should be discharged early in his career. Even though the assumption may often be invalid, the employer may approve the plan on the ground that automatic increases provide an attractiveness to steady employment and thus reduce the labor turnover.

Once the base rate is established, the negotiators must take up those wage provisions which are built upon it. The prevailing rate for overtime pay is 150 per cent of the base rate—"time and a half"—and this rate applies to all hours worked in excess of 40 a week. It is not uncommon for double time to be paid for work on legal holidays, where such work is not an inevitable part of the operation of the industry. In railroad and public-utility work, where service continues for 365 days a year, holiday work as such is seldom penalized, but in these instances double time is often the rule for work on the seventh consecutive day, regardless of the day of the week which it might be. Special overtime practices vary greatly among different industries, having been the product of the customs and necessities which the character of the industry demands.

It is usually within the power of the employer so to organize his operations as to eliminate most if not all of these penalty hours, and if so he seldom raises serious objections to them. Where he cannot, he is apt to charge that the union is not in fact seeking relief from excessive work-hours but is trying to increase the earnings of workers without increasing the base rate, and often this charge is correct. However, the establishment of the basic 40-hour week and the time-and-a-half principle in the Fair Labor Standards Act of 1938 has brought about a general acceptance of this provision as a minimum so that negotiations are ordinarily limited to proposals for overtime benefits in excess of those provided in the act.

In plants that operate more than 8 hours a day, two or even



three shifts may be employed. Sometimes the 24 hours of the day are divided into three shifts of 8 hours each: the day shift, the swing (evening) shift, and the graveyard (midnight) shift. Recognizing the comparative undesirability of the two night shifts, both employers and unions frequently agree upon a differential in wage rates to compensate for the undesirability. In practice, these differentials are usually 4 or 5 cents an hour for the swing shift and from 6 to 10 cents an hour for the graveyard shift. West Coast longshoremen receive a night differential of 50 per cent of the base rate, but so high a figure is unusual. Negotiations of the exact figure often require long and complicated argument since there is no theoretical basis for determining a correct amount, and there are no principles for guidance.

Supervisory differentials, which are premiums paid to those who have a small measure of responsibility in overseeing the work of their less experienced colleagues, are likewise determined without theoretical principles. A leaderman or quartermen, for example, may receive the base rate plus an amount ranging from 5 to 15 per cent. In some cases foremen's wages are calculated in the same way. The term "foreman," however, is applied to a wide variety of jobs—some are genuine executives and others are mere straw bosses.<sup>3</sup> Since the job content differs from plant to plant the practice of determining foremen's wages is equally variable. Within industries, however, accepted practices have come into being, and the method of calculating supervisory differentials tends to follow the pattern of the industry. Presumably the premium should be enough to reward the supervisor for the responsibility he is expected to assume, but since this is practically impossible to ascertain, the actual figure usually arises out of the pressures of the bargaining process. In any event, the agreement should specify differentials applying to all supervisory workers represented by the union.

Other special wage provisions must appear in many agreements. In some industries, for example, there are penalty

<sup>3</sup> See J. Carl Cabe, "Collective Bargaining by Foremen," *Bulletin* of the Institute of Labor and Industrial Relations, University of Illinois, September, 1947.

premiums for work that is especially dangerous or disagreeable or for handling cargo of similar character. These can be the cause of extended controversy because the judgment as to disagreeableness is essentially subjective. In a few occupations, bonuses or commissions are customary and should be clearly specified in the agreement. With increasing frequency, agreements have provided that certain holidays shall constitute paid vacations—such days as Thanksgiving, Christmas, Labor Day, and Independence Day. Others are occasionally added. Less common, but occasionally found, are provisions for a limited period of sick leave during a year. In order to prevent workers who remain healthy from pretending illness in order to acquire additional days of paid vacation, the employer may justify a requirement that a doctor certify the genuine character of the illness.

One wage scheme which is frequently proposed but in the United States is seldom adopted is the so-called "escalator clause." Such a clause provides that the general level of wages should move upward or downward, in accordance with a pre-arranged plan, whenever the cost of living moves upward or downward. Labor's insistence upon wage increases to compensate for an increase in living costs naturally suggests that labor should be willing to accept decreases when costs of living fall. Frequently this may be correct, but the automatic escalator clause is unsatisfactory because it ties wages exclusively to the cost of living and ignores such additional forces as the productivity of labor, the substitution of machinery for labor, and the needs of the labor market. Also it assumes that the wage scale at the time of the adoption of the clause is correctly related to the cost of living, which may or may not be correct but which cannot be defended upon any logical grounds. Management may likewise disapprove of an escalator clause with the very correct reasoning that its own costs and profit do not move upward or downward in strict harmony with the cost of living. Even when both parties agree to the plan, they have found some difficulty in agreeing upon a proper method of determining changes in the cost of living. The consumer's index figures of the U.S. Bureau of Labor Statistics are probably the

best obtainable for the entire nation, but the bureau itself has admitted that its methods have unavoidable imperfections. For these reasons the escalator clause, which often appears attractive at first glance, is seldom acceptable to the negotiators.

Incentive wage plans were formerly the object of universal opposition by unions. This was because they were usually devices to get more effort out of the workers without a proportionate increase in pay. As was pointed out in Chap. 6, workers learned from bitter experience to be exceptionally suspicious of all plans designed to speed up the working pace.

The predecessor of the incentive wage is the piece rate. When the worker is paid according to the volume of accomplishment instead of by the hour, it is assumed that each worker is thereby encouraged to do his best. Labor often found, however, that when the volume of output was increased the rate went down so that they received the same daily earnings for harder and faster work. The employer could accomplish this only when his control over the wage rate was absolute, without union participation. But frequently the piece-rate worker was unable to increase output because of stoppages in the flow of materials or equipment to his bench or station. For example, workers preparing vegetables in a cannery are usually on a piece rate, but their speed of work is largely dependent upon the hour-rate workers in the warehouse or shed who move the raw food to the preparing tables. In instances where the workers are guaranteed the reward of their extra effort and where they are actually able to determine their own speed of work, a piece-rate system may serve as an incentive. In other instances it does not.

Many incentive systems were devised which were so complicated that the workers were unable to determine the method by which their earnings were computed, and this bred additional opposition from the unions. A number of these confusing plans are still in operation, and under them the worker doesn't know precisely how much he is earning until he actually receives his pay envelope, and even then doesn't know how it is calculated. That this system would inevitably arouse suspicions seems obvious; it serves as an incentive to trouble rather than to good work.

In recent years, true incentive systems have been developed which have received the support of some portions of organized labor. They are understandable to both management and labor and provide an incentive to hourly workers as well as to those on a piece rate. The plan requires an accurate record of total production and provides that, if an increase in output attributable to better work should occur, a percentage of the value of that increase will be distributed among all employees. The method of calculating and distributing this additional sum is known in advance to the representatives of the workers, who are thereby protected against the maladministration which is possible under conditions of secrecy. The only satisfactory wage systems are those which are open and aboveboard, and if this rule is not overlooked, the development of good incentive wage plans may go far toward an improvement in the level of industrial production as well as in the peacefulness of labor-management relations.

It is frequently agreed that the wage provision may be opened for discussion and adjustment without reopening the full contract. For example, an agreement may be annual, with provision for semi-annual consideration of wages if either party serves notice upon the other 30 days previous to the midyear date. Economic changes such as sharp movements in the price level or other phases of business activity may make it desirable to both parties or either of them to give biannual attention to wage rates. But both parties are usually reluctant to open the whole contract to the extended debate and expensive negotiations so often entailed. Both sides desire as much stability as possible so that even the wage-reopening clause is usually restricted to 6-month intervals.

### PROFIT SHARING

It has been long and commonly argued that workers would be more diligent and conscientious if their efforts were rewarded with a share in the profits of the firm by which they are employed. If it is assumed that their wages are adequate to compensate for an average quality in the performance of their duties,

then a better-than-average quality could be achieved through offering the inducement of a portion of the added profit. This differs from an incentive plan in that the reward is not based upon physical production but upon the financial position of the employer. Its advocates assert that it gives workers a sense of ownership and thereby increases their loyalty to the management.

If the distribution of added profits is determined solely by the management, with the workers excluded from any exact knowledge of the company's financial condition, it is less likely to promote loyalty than to raise suspicions or doubts of the employer's integrity. If a good "share" is paid one month and none the next, the employees will in all probability want to know what has happened to their profit. This means that, if profit sharing is to succeed, certain representatives of the employees must be permitted to inspect the account books of the firm and to have all details of the company's finances made clear to them. Even with this knowledge, however, they are likely to resent management decisions to divert profits into surplus, depreciation or capital equipment. In competitive industries, especially, management is unlikely to be willing to open its books to union officials. Union membership, after all, extends through the employees of competing firms, and one business establishment will not be inclined to release its financial secrets to representatives who deal daily with its rivals. Large groups of people do not easily keep secrets, and unions are large groups of people.

Profit sharing has worked successfully in small firms where the relationship between manager and employees is intimate and personal. But when both companies and unions are large and impersonal, the plan breaks down on the line between union status and management prerogatives. It requires taking the union into confidence on matters which the employer believes are not a proper concern of the union.

It should be pointed out, further, that wages undoubtedly have some relation to physical productivity but that it is difficult to see any causal relationship between profits and the wage rate. Profits may be derived from a windfall situation in the market

or from financial manipulation of the company stock. Labor did nothing to create such profits and can economically claim no share of them. On the other hand, labor's efforts may be more than adequate, but financial mismanagement may result in a poor profit position. An intelligent incentive plan could yield the desirable effects of profit sharing and not be weighted with the undesirable aspects.

Certainly no profit-sharing plan can accomplish its purpose without the full cooperation of the employees through their own representatives. If, in the negotiations, both sides can honestly agree upon such a plan, there can be no objection. Very rarely will there be agreement, however, and neither side can benefit by forcing it upon the other.

### THE WORKING DAY AND WEEK

When the negotiators take up the question of hours (if the firm is engaged in interstate commerce), the minimum standard upon which no discussion need be wasted is the 40-hour straight-time week, established by the Fair Labor Standards Act of 1938. Discussion might arise, however, over proposals for a work week of 6 days of 6 hours each, or 5 days of 8 hours each, or of other arrangements. The operating needs of the industry and local conditions and practices will be the determining factors. A change from the existing schedule of hours will necessitate a rearrangement of operating procedures in the plant and therefore may entail considerable expense on the part of the management. The latter is therefore likely to prefer a continuation of the existing schedule. Workers, on the other hand, may have very valid reasons for desiring a change. For example, they may want freedom during a few of the daily hours when stores are open or for attention to other private matters. Or if the speed of work is unusually rapid they may be driven by fatigue to demand daytime hours for recreation. For such reasons they may ask a 6-hour day even though they know that the employer will arrange affairs to prevent the payment of overtime. Or the union may be willing to shorten the daily hours, even at the expense of take-home pay, in order to provide jobs for more of

its members. These and a multitude of other possibilities have focused many disputes upon the hours question.

In determining the number of daily hours of work, the negotiators are obliged to define the circumstances under which a worker is entitled to receive pay. If a mid-morning rest period, or "smoking time," is customary in the industry, there should be no misunderstanding regarding pay during such a period. Ordinarily, these brief periods are allowed without any deduction in wages, that is to say, they are on *company time*. Again, it is usually provided that shop stewards may devote time to the first steps in grievance settlement on company time. The management, however, may insist upon setting a limit to the amount of time that may be devoted to what it will call "union business" during a day.

The "portal-to-portal pay" lawsuits of 1946 centered attention upon the necessity of a precise definition of paid time. These arose out of a contention before the courts that workers should be paid for all time during which the employer requires their presence upon the premises of employment. In preceding years, for example, coal miners were not paid from the time when they reported for work at the mine gates, but from the time when they reached the coal face. In many instances, a half-hour or more was required to travel through the mine before wages started. In other industries, workers are expected to arrive at work before the pay starts, and to clean or prepare their tools, to don uniforms, or other similar appendages of the job, on their own time. Actually, the determination of such questions is not appropriate for judicial decision, since the conditions from job to job differ so greatly. Accordingly, it is a matter best settled by collective bargaining. Traditional practice, modified by changes which have occurred in the industry and tempered by clear justice, should be weighed by the negotiators, and agreement reached in calm discussion.

### REGULATION OF TRADE PRACTICES

Many practices, commonplace in the industry concerned, are subject to change. If the change is sudden, it may prove personally

## SENIORITY, PROMOTIONS, AND LAYOFFS

It has been observed several times in this book that workers tend to acquire a sense of possessiveness toward their jobs—that with the mere passing of time, in the same position, they develop a psychological “vested interest.” This is accompanied by the feeling that the old-timer is entitled to rights not possessed by the neophyte. Apparently this is a manifestation of some deeply ingrained human trait since it is not only observable throughout all of recorded civilization but is found in anthropological studies of primitive tribes. One of the more obvious of its manifestations in contemporary collective bargaining is the customary desire on the part of workers for an acknowledged system of rights and privileges attaching to seniority. It is often argued that there is a presumption of superiority in long service, that the man who has worked at the job for years will automatically be a better man than the beginner. Whereas this may on occasion be correct, there is really insufficient basis for assuming it to be a universal rule. Not everyone learns with age, but everyone forgets so that it is quite possible that the old and experienced man is actually inferior in efficiency to the raw beginner who may offset the deftness of long practice with the vigor and ambition of youth. This does not mean that seniority systems should be abandoned. On the contrary, the psychological motive is undoubtedly a much stronger force than economic efficiency. It is compounded of the need for security, especially among people past middle age, the yearning for prestige, and the necessity for hope of advancement and progress. It is almost certain that an employer who does not recognize the fundamental importance of these facts will suffer frequent labor strife and a high rate of turnover among his employees. Unions are continually pressing for more secure arrangements for the rights of senior employees.

These arrangements may include one or more of a number of devices. In many agreements it is provided that seniority confers such advantages as the right of choice among available jobs. In bus transportation, for example, some schedules are



more desirable from the driver's point of view than others. "Runs" which enable the driver to be home at night, which cover enough miles to assure him a good income computed on a mileage basis, and which are in sufficiently open country to permit him to traverse his run in the least possible time are the most desired. In this business it is customary to fill a vacancy in a desired run by the seniority principle. The oldest driver in point of service is offered the job. If he chooses not to accept it, the next in seniority is given a chance, and so on down the line. Although in many instances the possibility of differential advantages among jobs of the same classification is not so obvious, something of the sort is found in most industries. Usually there is no particular difference in the required skill so that the allocation of desirable jobs (within the same job classification) can seldom be made upon the basis of personal efficiency. If the allocation is haphazard and without plan, jealousies and rivalries will ensue. Some workers will resort to plotting and scheming for preferment, and serious trouble will become certain. Seniority, resting on its firm psychological basis, has proved to be the most satisfactory solution to the problem.

Where an automatic rate range prevails, seniority is rewarded with a higher hourly wage and therefore acquires a cash value in the eyes of the worker. The problem of negotiating this aspect of seniority is primarily a wage question, but attention must also be given to the length of the period of time which must elapse between the arrival at one wage level and the increase to the next. In some cases it is agreed that increases will be automatic after 6-month intervals, in others after 1 year. Of course the workers benefit as the period is shortened, while the employer probably benefits from the longer intervals since they involve fewer wage increases in a given time.

Another device in which seniority is a test is the system of promotions. Where personal ability is clearly demonstrable, unions seldom object to the principle that the employer should, when vacancies at higher rank appear, promote the eligible worker with the most ability. But usually there is more than one eligible candidate, and all are endowed with approximately equal ability. In such a case, the seniority principle results in

the promotion of the candidate who has been longest in the employ of the firm. It is not expected that a clearly unqualified person be promoted simply because of his long service, but rather that seniority shall govern when other qualifications are approximately equal.

The feeling of possessiveness which accompanies seniority applies with special force when the management finds it necessary to reduce the number of workers on the pay roll. Unions recognize that such layoffs are frequently unavoidable and usually meet it with the proposition that the last workers to be employed should be the first to be laid off. In other words, seniority increases security in the job. This may sometimes result in injustices, but in general seems to be the only workable plan.

The actual task of writing a seniority clause in a union-management agreement is not as simple as might appear, however. A multitude of extremely complex questions arises, which may even cause long and bitter controversy between the negotiators. For example, there is the problem of the size of the unit in which seniority shall be calculated. In a department store, should it be on a departmental or a store-wide basis? If the latter, a senior ribbon clerk might claim the ability to succeed to the head clerkship in the book department. If the union is convinced of this clerk's suitability and if the management is skeptical, a serious dispute could arise. But if seniority were on a departmental basis, a small department staffed with young clerks might offer no chances for promotion in many, many years. This problem may be solved by a compromise providing for seniority within a group of allied or similar departments. Or it might be solved by agreeing upon a testing method of determining eligibility which eliminates whimsical choice and thereby minimizes the possibility of misunderstanding and dispute.

Another problem which must be solved in negotiations involves the effect of an extended period of absence, for illness or other reasons, upon the seniority status of a worker. In such cases it is commonly provided that the employer shall grant a leave of absence to workers with a legitimate reason for absence and that workers "on leave" do not forfeit their seniority. Indeed, they may continue to accumulate seniority rank during the ab-

sence. This was a standard practice during the Second World War, when many workers in the armed forces were permitted to continue in their seniority status as though they were not absent from the old job.

In some cases unions have agreed to a clause providing that workers engaging in an unauthorized strike should automatically forfeit their seniority and begin again at the bottom as though they were new employees. Since it is incumbent upon a union to prevent its members from engaging in strikes that are not sanctioned by the union, the officers often find this an excellent device for the maintenance of discipline in the ranks. In most cases seniority is a valuable possession, acquired only with the slow passage of time so that its loss is a serious penalty which can be imposed in the interest of both the management and the union. So long as the union is an honest representative of the workers, this power is an advantage to all concerned. But if the union leaders are engaged in secret collaboration with the employers for personal gain, it may be turned into an instrument of oppression. In such a case the only recourse of the workers is to force reform upon the officialdom of the union.

Special problems of seniority arise in many industries, providing grist for the bargaining mill. Some employers, believing that seniority is a question to be resolved by the employees themselves and that they (the employers) are very little concerned with the details of the system that is to be in operation, are willing to agree to almost any reasonable plan proposed by the union. In such cases they are apt to leave the individual problems which arise out of the day-to-day operation of the system to be resolved by the union alone, thus relieving themselves of an arduous duty and escaping charges of unfairness and discrimination. The union officials, and not the employer, would become the object of criticism by workers who feel themselves to be unjustly treated. Other employers, however, are unwilling to surrender this element of control over their employees. In these cases, agreement upon a seniority plan may not be achieved without lengthy discussion of all possible details, and the plan itself may occupy more actual space in the agreement than any other single subject.

## UNION-MANAGEMENT COOPERATION

In a number of instances, unions and companies have agreed upon devices for the improvement of marketing, of production, and of handling the current problems arising out of their business relationship.<sup>4</sup> This is based upon the valid assumption that there are certain areas in which the interests of management and labor are identical. As previously pointed out in this book, the identity must not be exaggerated. Usually an employer believes that increased income for his employees means decreased income for him, and vice versa. Quite often the belief is correct. It is still true, however, that the employer and the workers may prosper together. In the garment trades and in a few other industries, the unions have actively participated in advertising and marketing campaigns to further the entire industry. Sometimes the unions have provided employers with engineering service to increase the volume of production. Clearly, cooperation of this sort cannot succeed unless it flows from full agreement between the employers and the unions, and the principles of the venture, at least, should be incorporated in the labor-management contract. Such plans are not ordinarily hatched full-grown; they emerge from long conversations and planning. Accordingly they are seldom the subject of controversial discussion during official negotiations, although they do occasionally cause dispute, especially when a measure of mutual distrust exists.

A more common variety of union-management cooperation takes the form of joint committees, established by agreement, to improve production, morale, and harmonious relations. Prior to the Second World War, "shop committees" were used as union-breaking devices to such an extent that the labor movement developed a healthy suspicion of them. Almost without exception the earlier committees were subject to the absolute control of the management and were elaborated into company

<sup>4</sup> See, for good examples, Sumner Slichter, *Union Policies and Industrial Management*, and Louis A. Wood, *Union-Management Co-operation on the Railroads*.

unions designed to prevent the formation of real unions. In a few notable instances, however, committees were formed through the full cooperation of the management and the unions and were not subject to the criticisms of the other type. Since these committees were based upon the principle of equality among the two parties and neither side had a veto power over their actions, they could operate within the framework of union security. During the Second World War the need for greatly increased production in industry provided a reason for the War Production Board to foster the formation of similar committees in many plants where they had never before existed. Some of these were failures from the start; others dwindled away after the war; but some of them continue to function; and there is every reason to believe that the plan can be perfected and extended. Where mutual confidence exists, the committees can benefit all parties. Where confidence is shaky, they can possibly strengthen it. Success requires fair play and candid honesty, characteristics which, it would seem, are not too much to ask. Although they must be built upon a basis of mutual good will, which is too often lacking, union-management committees are not visionary or impractical. They are, on the contrary, a hardheaded way of accomplishing immediate and practical objectives. They fail when they attempt to go beyond the sphere of cooperative possibility, which is to say that they cannot negotiate the labor-management agreements, bargain over wages, or determine working conditions. They can be eminently successful, however, in improving the routine of the productive process, in eliminating waste and inefficiency, and in fostering trust and confidence between employer and employees.

The details of such plans, of course, must be adjusted to the particular industry and therefore must be determined by the negotiators as part of the collective bargaining process. Negotiators can benefit from a knowledge of experience in other firms, but the exact plan must be worked out over the conference table. Unless both sides display a willingness to undertake some cooperative plan, it is better to drop the matter and wait for a more auspicious opportunity. No one can be coerced into cooperation.

## THE REMAINDER OF THE AGREEMENT

The principal matter not yet discussed is often known as the *judicial* portion of the agreement and is concerned with the handling of grievances and disputes between the parties. This will be the subject of Chap. 12, and discussion is therefore deferred.

The duration of the agreement, however, is a subject that may be discussed here, even though it is usually provided in the concluding clause. The largest number of agreements runs for a period of 1 year, although a few run for 2, 3, or even 5 years. An increasingly common practice is to provide for a nominal duration of 1 year, with the understanding that it will remain in force indefinitely unless either party serves the other with notice of intent to renegotiate within a stated period of time before the nominal expiration date. The service of such notice would automatically convert the nominal into a real date and would therefore inaugurate negotiations for a new agreement.

In the process of negotiation, the termination date may pass, but the parties may agree to retain it in temporary force until such time as new agreement may be reached. If this is done, it is normally understood that any wage adjustments subsequently reached will be retroactive to the date of the expiration of the old contract. This type of temporary agreement is usually put in the form of a stipulation, signed by representatives of both parties.

It is sometimes quite difficult to secure unanimity upon a proper expiration date since the date selected may have strategic advantages for one side or the other. If the date should come at a time of year when the employer's business is likely to be unusually active, the union may gain a slight bargaining advantage. At such a time the management will be reluctant to face a strike and the consequent loss of the year's best business. On the other hand, if the expiration date should come at the beginning of a normal seasonal slump, the employer's hand is strengthened and he may feel able to defy the union to strike.

If there are several unions dealing with the same employer, they may seek to have all contracts expire on the same date, whereas it may be to the employer's advantage to have them staggered throughout the year. In the latter case, a strike by one union could not be supported by the others unless they are willing to risk a charge of violating their agreements. By battling with the unions one at a time, the employer might be able to divide and conquer.

For reasons such as these, accidental dates are frequently unacceptable. Both parties may maneuver, may delay action, or may bargain at length to secure the termination date most suitable to their different interests.

It will now be clear that *everything* in a union-management agreement is important, either immediately or potentially. The representatives of both sides must watch every word and every punctuation mark. Nothing is insignificant; nothing is too small to demand the most careful attention. Most important of all, however, is the need for the realization that the signing of an agreement is the beginning, not the end, of a relationship, and that future harmony requires that every item in the agreement be understood in exactly the same light by both parties. If there is any doubt whatever regarding the proper interpretation of any section or clause, it should be discussed until the doubt is thoroughly dispelled.

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## *Chapter 12*

### *ADJUDICATION BY AGREEMENT*

#### GRIEVANCE PROCEDURE

In addition to those portions of a typical labor-management agreement which were discussed in the preceding chapter, there is usually some provision for the settlement of the routine grievances which arise. Actually this is a fundamentally important part of the agreement since it provides the means for the interpretation and application of the agreed conditions under which the parties live their daily lives.

In the larger plants where the system of shop stewardship prevails, it is usually understood that the steward shall be the initial representative of a worker with a real or fancied grievance. Immediately and on the spot he attempts to discover the truth, and if he believes the grievance to be real he takes it up with the responsible foreman. Where there are no shop stewards, the business agent of the local may serve the same function. In either case, the first steps in the "grievance machinery" must be explicitly understood and briefly stated in the agreement. The steward cannot perform his function unless the employer permits him to cease temporarily the duties of his regular employment; the business agent cannot settle the matter unless he is permitted on the plant premises to talk with both the worker and the foreman. Since successful grievance machinery is as important to the employer as to the workers, a negotiation that is conducted in good faith on both sides seldom produces any serious disagreement in the determination of these questions. Over the

years the practice has become fairly well standardized and accepted without controversy.

The overwhelming majority of grievances are resolved at this first level. However, some of them will remain unsettled, and the agreement must provide further steps if work stoppages are to be avoided. The sequence of steps in the procedure will necessarily be determined in accordance with the structure of the industry and of the union, but in general the agreement usually provides for carrying the grievances to successively higher officials on both sides. In order that the plan agreed upon may function smoothly, the precise responsibility at each step must be clearly and carefully written into the agreement.

In planning the steps there is sometimes a question about the desirability of keeping a written record of each grievance. Such a record would start with a written statement, often on a prescribed form, of the alleged grievance. It would be written by the worker himself or by the shop steward as his representative and would state the exact nature of the trouble and the date. Further forms would be provided upon which to record the disposition of the matter at higher levels. Such grievance documents are usually numbered for ready reference and become a permanent file. There are certain obvious advantages to this plan, chief of which is the resulting fact that the original grievance cannot be lost sight of in the subsequent proceedings. In any conversation the subject has a tendency to shift as expressed remarks remind individuals of related matters. The original topic of discussion may vanish entirely in a prolonged conversation, irrelevancies may be interjected, tempers may be aroused, and a complete breakdown of harmonious relations may ensue. The written record serves to keep the discussants on the subject and to exclude extraneous dispute. It further serves as documented precedent for the similar cases of the future; it gives efficient information on the case to other shop stewards and foremen which can guide their actions when other grievances are raised. By developing a sort of informal "common law" of grievance settlement and informing both sides of the precedent established, the number of cases to be handled may be greatly reduced.

Neither side is likely to press a case which is known in advance to be a lost cause, which may be told to them by the written record of earlier grievances.

On the other hand, there are certain marked advantages to the informality which can prevail when no documentation is prepared. The worker, because of misunderstanding or lack of education, may be unable to present a succinct and comprehensive statement of his grievance. What he writes is immutable; he can neither add to nor subtract from it. Awkwardness in stating his case or a shift in emphasis caused by ill-chosen wording, or an otherwise inconsequential misunderstanding of fact may easily cause a just claim to be rejected. The truth could be lost in a cumbersome file of words and paper. In addition, a worker may fear for the safety of his job and hesitate to put the facts in writing lest they be used against him. It may even be undesirable to allow precedents to be established through the written record since personal grievances are apt to be so different in detail. The aggrieved worker may never feel satisfied that his case had received fair treatment if it is forced into conformity with a crystallized set of rules established in the determination of previous cases which may have only a superficial similarity.

In a large and impersonal establishment the system of written grievances is likely to be most suitable, but in a small shop where an informal labor relationship exists in mutual confidence, it is probably better to deal with them on an oral basis only. There is, however, a compromise which is often satisfactory. The first stage of the grievance procedure may be informal and without a written statement. Only if the question remains unsettled at that level and must be appealed to higher officials would it be reduced to writing. By that time the worker and his representative, on the one hand, and the foreman, on the other, should be enabled to make a proper statement of the full facts. The great bulk of the grievances, most of which do not involve important matters of principle, would never enter into the establishment of precedent. And the intervention of regular union representatives would have in large measure obviated the worker's fear of losing his job as a result of filing a protest.

The application of these principles to the circumstances actually prevailing must be given the careful attention of the spokesmen who are negotiating an agreement. And both sides must remain willing to make changes when experience has indicated their advisability. The equitable resolution of grievances is one of the major foundation stones of good collective bargaining, and no phase of it is too trifling to receive the most careful and continual attention.

### CONCILIATION OF GRIEVANCES

The plan for settling grievances is incomplete if it is built upon the assumption that the highest representatives of the management and union can agree upon a solution to every case. Since the subordinates have failed to agree, there is a natural tendency for their superiors to support their judgment. Further, the dispute may involve matters of principle upon which neither side is willing to make concessions. Recognizing this fact, negotiators sometimes include in the contract a statement that an outside, or "third," person be invited to attempt a break in the deadlock. This third party may be a member of the staff of the Federal Mediation and Conciliation Service, in some states of the State Conciliation Service, or a private person. A very few agreements provide for a permanent conciliator, a person agreeable to both parties who serves in a mediatory capacity whenever a grievance reaches the stage of deadlock.<sup>1</sup>

The third party as conciliator is seldom successful unless he has a broad background in labor-management relations, is equally respected by both sides, and is well equipped with tact and discretion. He has no authority to make any decision or to determine the answer to the question in dispute. His only value lies in the fact that he enters the scene with a fresh viewpoint, can see both sides without prejudice, and draws upon his exper-

<sup>1</sup> The terms "conciliation" and "mediation" may be used synonymously. The words have a different etymological derivation, and occasional writers have sought to furnish each with a separate technical meaning. However, in the actual practice of collective bargaining, they have come to be used interchangeably.

ience to suggest possible compromises. An argument coming from him might be received with attention, while the same argument advanced by an avowed opponent might be rejected without a hearing. In order to find the needed personal qualities, the parties are usually obliged to turn to a government conciliator or to a permanent private conciliator who makes it a part of his business to be thoroughly familiar with the industry and the history of its labor relations.

If the dispute has reached the point of personal animosity so that the parties can no longer discuss the problem dispassionately, a conciliator may be very effective. For a time he may act as a nonpartisan messenger, carrying proposals and counter-proposals from one office to the other. In private conversation with the parties he can learn which positions are held by mere stubbornness and which by conviction. With a careful retention of his neutral status, with subtle suggestion or blunt frankness as the occasion demands, he may be able to secure a genuine meeting of minds. This is often accomplished by persuading the dissident parties to meet together again, with himself as chairman. While it is not always true that "feet under the same table don't kick," it is often true that a skillfully guided conference around a big table can yield agreement. As a matter of fact, the majority of conciliation cases are successful.

Conciliators are often invited to participate in a case even though there may be no provision for such action in the labor-management agreement. In fact, this is most frequently the case at present. However, if acceptable conciliators are available, it is not only an expression of good will but a move in the direction of practical harmony to provide for their use in the written contract.

### VOLUNTARY ARBITRATION OF GRIEVANCES

Many agreements provide that, if the deadlock is not otherwise resolved, the dispute shall proceed to the final step of arbitration. That is to say, a third person, or board of third persons, shall hear both sides of the case and make a binding decision. It is voluntary in the sense that both parties, on signing the contract,

agree to submit all such disputes to arbitration and to abide by the resulting award.<sup>2</sup>

There prevails a considerable difference of opinion regarding the desirability of arbitration as the final step in grievance procedure. Its advocates point out the simple and compelling fact that a decision, even if not wholly satisfactory, is better than a costly work stoppage. The arbitrator is selected by both parties and may be presumed to be impartial as well as intelligent. He hears and analyzes the facts and bases his decision upon them, with a consequent high probability of correctness. The case would not have reached the stage of arbitration had not the parties exhausted all possibility of voluntary compromise. Both sides will have taken positive positions from which they are unwilling to retreat. Arbitration permits them to lose the decision with a minimum loss of face and prevents the showdown of a strike or lockout. If the latter are really weapons of last resort, then arbitration should be tried first. It is also pointed out that the typical grievance is in itself a comparatively small matter, and because of stubbornness a molehill may grow into a mountain. It is better to settle the dispute in rational procedure than with economic force, which may prove catastrophic to all parties concerned.

Clear as this advocacy may seem, there are valid arguments on the other side. First is the difficulty of securing competent and impartial arbitrators. One cynic has asserted that, in describing the role of an arbitrator, "competent" and "impartial" are incompatible terms. This exaggerated statement is intended to call attention to the fact that competence to decide questions involving the minute practices of an industry may be difficult to achieve without lengthy experience as a participant in it and that anyone who has had such experience is necessarily partial since the experience was gained either as an employee or in the management. In an effort to find impartiality, most arbitrators

<sup>2</sup> Compulsory arbitration differs in that the parties have no free choice in the first place; arbitration is imposed on them by an outside authority such as government. In either voluntary or compulsory arbitration both parties are bound to obey the arbitrator's decision. An arbitrator is sometimes called "arbiter" or "umpire"

have been drawn from the ranks of the clergy and the professors. And although they have usually been honest, sincere, and conscientious, they have all too often been quite ignorant of the intricacies of industrial practice and have therefore been unable to grasp the finer points of the discussion held before them. On rare occasions an award has been handed down which was recognized by both parties as impractical, leading them to an agreement to repeat the proceedings before a different arbitrator.

A second objection is that arbitrators frequently lack the fortitude to decide a question one way or the other. They tend to seek a compromise. The party making the demand would thereby always benefit, since the compromise would award a probable half of that which is demanded, whereas the party resisting the demand is bound to lose at least something. That this tendency on the part of arbitrators exists seems to be supported by the evidence. An arbitrator may seek to make a popular decision for either of two reasons: he may hope that by not seriously antagonizing either side he may be invited to act in a similar capacity in future cases, or in a more unselfish mood he may hope that a compromise will yield permanent peace between the parties whereas a one-sided award may precipitate the dispute all over again should the same issue arise in the future. Only through experience can an arbitrator learn the merit of hewing to the line, of deciding a case on its merits without respect to the possibility of hurt feelings on either side. Frequently, of course, a compromise is still the best solution, but if so it should be awarded because of its merits rather than because of a desire to make everybody happy. The arbitrator who is rigorous in his work will probably be the object of vigorous abuse, but in the long run he will gain respect.

The procedure for finding a good arbitrator is a problem which must be faced in negotiating a labor-management agreement and which may prove so difficult as to constitute a third objection to arbitration as a part of the grievance machinery. Many different practices exist; a critic has said that all of them are wrong. In some cases the parties agree on the selection of a specific person as "permanent arbitrator." If the individual selected accepts the appointment, he holds himself available to decide grievance



cases at any time during his term of office. In other cases a "panel" is agreed upon—a list of perhaps half a dozen acceptable arbitrators—from which a name is drawn, either by lot or by rotation, when cases arise. In still other instances an agreement will provide that as cases arise the parties will ask that an arbitrator be named by some outside person or office, such as the mayor of the city, the governor of the state, a judge, the Federal Mediation and Conciliation Service, the Secretary of Labor, or a private society like the American Arbitration Association. Many agreements providing for arbitration do not prescribe for the method of selecting an arbitrator beyond the expectation that the parties will agree upon a third person when the need arises. There are several ingenious schemes built upon the general proposition that if both parties continue long enough to submit proposed names to each other an agreement will eventually be reached. During the contract negotiations, when the method of selecting an arbitrator must be determined, each party is likely to advocate the method which may be most favorable to its interests. The labor spokesman, for example, may urge that the Mediation Service be designated to do the choosing, especially if the local conciliators have a slightly prolabor background. On the other hand, if the mayor is also a successful businessman, the employer spokesman may contend that he is the appropriate authority. The problem facing both sides is always conditioned by the local situation and in some instances presents a problem of real gravity.

A fourth objection to arbitration is one which has been voiced with increasing frequency in recent years. It is that the fees of an arbitrator are too high. Most grievances involve comparatively small sums of money, and the cost of an arbitration proceeding may exceed the amount at stake. Leaders of the American Arbitration Association<sup>3</sup> believe that individuals should arbitrate as a public service, without fees. The fallacies of this position are that it restricts the work to persons of at least moderate wealth who can afford to take the time for lengthy hearings and that it

<sup>3</sup> A private but impartial society with head offices in New York which stands ready to name arbitrators, on request, from its "national panel."

erroneously classifies as public duty the allocation of pecuniary gain between two contending parties. The disputants are usually engaged in a controversy over money or something that is worth money, and it is improper for them to expect a public-spirited individual to give his time and energy without remuneration for the settlement of their dispute. On the other hand, some arbitrators, having safely secured their assignment, have charged excessively high fees—sometimes several hundred dollars a day—which constitute an exorbitant cost to a small employer or local union. He may also insist upon the taking of a written transcript, which may cost another hundred dollars a day. When the cost of preparing and presenting the case is considered, the total expense may render the arbitration of routine grievances wholly impractical.

The inclusion of an arbitration clause in the grievance machinery is also said to discourage genuine negotiation. If the parties know that arbitration always awaits at the end of the line, they may feel that an earlier attempt to settle the dispute by themselves is a waste of time. In such an event, collective bargaining would break down and yield to arbitrary decision. It must be admitted that there is often much truth in this—it has happened time and again. However, it is in part negated by the high cost of arbitrating (unless one party is wealthy and the other poor), which encourages the disputants to settle the case themselves rather than assume the additional expense. Even so, a universally accepted system of arbitration, if not properly safeguarded, could virtually eliminate serious collective negotiation.

Arbitration is subject to the further charge that it is, as its name implies, arbitrary. In a court of law, a jury determines the facts, and the judge applies a previously existing law. In an arbitration proceeding, however, a comparatively untrained chairman determines the facts and makes up the law as he goes along. Further, an adverse decision in any court of original jurisdiction may be appealed to a higher court. In the typical arbitration case, however, both parties stake everything at issue on one cast of the die, there is no appeal and no possibility of reversal. This is probably the most serious of all objections to the

arbitration of major disputes. However, it must be remembered that the present discussion relates only to the arbitration of grievances, in which this objection is least significant. In a grievance case the arbitrator must restrict himself to the issue presented to him. He may be asked to interpret the contract, but he has no authority to change it. His duty is so delimited in nature that he cannot stray very far afield. Like a small-claims court, informal if arbitrary action is justified by the restricted character of the matter before it.

The limited nature of the task of the grievance arbitrator minimizes the other objections to arbitration which have previously been itemized. Even though perfect arbitrators cannot be found, many of the cases which actually arise can be settled by any reasonably well-informed and moderately intelligent person. The decision, even if bad, is not as calamitous as the possible alternative—a work stoppage. If arbitration is too expensive for minor cases, the very fact that it is provided for in the contract will be a stimulus to settle the dispute in its earlier stages, by negotiation.

### RENEWING THE AGREEMENT

Very seldom does an agreement provide any means for settling disputes arising at the time of its expiration and during the negotiations for its revision and renewal. Since it is usual for the negotiations to begin some weeks earlier than the expiration date and the old agreement is thereby still in force, it would be technically proper to provide for conciliation or arbitration of otherwise irreconcilable issues then arising, even if they included every clause of the contract.<sup>4</sup> Since both parties are likely to consider certain sections to be nonarbitrable as well as nonnegotiable, they seldom agree to arbitrate an entire agreement. Further, while they may be willing to submit grievances and matters of interpretation to an arbitrator, they may both object to sur-

<sup>4</sup> I was once called upon to handle a case in which every one of the 138 sections of the contract was in dispute. Such arbitration is not recommended to those who value their peace of mind.

rendering their own control over fundamental questions of policy. Those objections to arbitration which were mentioned in the preceding paragraphs may be trifling in a grievance case, but they become monumental in a contract case.

Even though few agreements provide the machinery for their own renewal, the negotiations do occasionally bog down, and machinery must be improvised. Conciliators from the Federal or state governments are usually at hand, private conciliators being seldom utilized in these circumstances. It is here that the most serious problems usually arise, and there is the greatest difficulty in securing a peaceful settlement. By the time the negotiations have collapsed and an overt dispute is in progress, the spokesmen have tried many proposals and failed, have committed themselves irrevocably to certain positions, and have defiantly asserted their intention of using economic force to gain their demands. If the atmosphere is surcharged with personal hatred, name calling, and abuse, it may require exceptional skill and tact to persuade the parties to listen to a conciliator, let alone to submit to arbitration. Pressure may be put upon both sides, however, by segments of the community. Other business firms, a chamber of commerce, or a trade association may persuade the irate employer to adopt peaceful means. The union in the case may receive forceful advice from its international officers, from a central labor council, or from friendly unions. Such pressures may force the disputants to accept conciliation and the arbitration of at least some issues.

### THIRD PARTIES IN CONTRACT DISPUTES

Although staff members of Federal or state conciliation services are occasionally asked to intervene in ordinary grievance cases, their principal duty is to participate in smoothing disputes arising out of the attempt to renew an agreement. Frequently their greatest skill lies in the ability to suggest offsetting concessions, that is, over-all compromises involving specific concessions by both sides. A union, for example, may modify its wage demand in exchange for a system of sick leave. Or an employer may be willing to extend the union's security if the union agrees to

eliminate alleged featherbedding rules. During the negotiations, each side may frequently make proposals of similar concessions. However, it must be remembered that an offer made by one party which is contingent upon a concession by the other is automatically withdrawn if not actually accepted in full since the contingency is an integral part of the offer. An agreement which is reached by virtue of a number of such trades is known in the vernacular as a "package deal," an appropriate term since the agreement is a bundle of clauses, each of which is dependent upon the others.

Failure to understand the nature of "package deals" creates a vast amount of misunderstanding in the minds of newspaper readers. In an important and spectacular case, the public is often informed in the press of offers and counter offers, and it may appear that the parties are very close together. Actually, however, they may be as far apart as when they started because the offers made on both sides are contingent offers, each one unacceptable to the other party. Third persons intervening in the dispute, even government officials, may have great difficulty in unraveling the actual status of the negotiations and in finding the precise positions of both management and labor. This is one of the several reasons why the amateur conciliator may discover that he is walking on quicksand or at best on shifting dunes. He is often further embarrassed to discover that his earnest proposals, which seem both original and ingenious to him, have already been threshed out in tedious debate and rejected.

The rather obvious conclusion is that conciliators, in order to be successful, must be trained and experienced in labor work. The basic training may be obtained in many universities and colleges, but the experience may be gained only by serving as an assistant, or understudy, to an experienced conciliator.

The arbitration of contract disputes requires essentially the same talents on the part of the impartial third party. He is not, however, expected to make suggestions. He listens to the debate on the points at issue, weighs all the evidence, and makes a decision. In a very limited sense he acts in the capacity of judge, but it is customary to keep the proceedings at a relatively in-

formal level, with little use of the courtroom rules of evidence. Unless testimony is clearly irrelevant or gossipy, he must listen to whatever the spokesmen of the two sides care to tell him. He may ask for additional facts, statistical data, or for the introduction of exhibits. He may want to see the plant, shop, or place of business and inspect the exact nature of conditions and of job duties. He may consult other arbitration awards, books, or documents as he sees fit. He must consider the equity of both parties to the dispute without overlooking the interests of the public and the economy at large. It would be going only a little too far to say that he needs to be possessed of the wisdom of Solomon. In all likelihood he will be faced with the necessity of making a decision which can neither be altered nor appealed and yet which may be a matter of economic life or death to the parties involved. Wage disputes involving sums running into the millions of dollars have been submitted to arbitrators, who sometimes have comparatively slight knowledge and experience.

Arbitration is an excellent procedure, especially in grievance cases. In major contract cases, however, it is often inappropriate, especially if it is without any machinery for appeal. It is, after all, arbitrary. It is final. It proceeds practically without rules or precedent. In brief, it gives too much authority to the arbitrator, who may or may not be properly qualified. Much arbitration has been excellent; much has been execrable. Fortunately, it is possible to foresee ways in which it, as a process, can improve in the coming years. The first step in this improvement lies in the training and development of a body of skilled arbitrators. Some so-called "panels" are now maintained by government agencies as well as by private organizations. These are lists of persons experienced in arbitration, with references to the cases in which they have served. This provides a first but long step. Much of it grew out of the experience of the Second World War, during which several hundred "public members" served on the War Labor Board and its subdivisions, and hundreds more served on Board panels, which conducted initial hearings and recommended to the Board. This is valuable experience, but it provides for no replacements in the national lists. In order to train younger men in arbitration it would be wise if the

present arbitrators were to take assistants with them to the hearings and to give them the experience of participation. Industry and labor could further such a program by selecting permanent panels of arbitrators and permitting the unpaid attendance of neophytes.

A second way for improving the quality of arbitration lies in the accumulation of a "common law" of labor-management relations—a conscious accumulation of precedent. In part this method is now tentatively fulfilled by the analyses of agreements by the United States Bureau of Labor Statistics and various state agencies, by several private services, and by the studies of academic scholars. Only when arbitrators can and do study the awards in earlier but similar cases and attempt the application of such earlier principles as may appear sound, will arbitration cease to be whimsically arbitrary. Only then can the parties have in advance a faint notion of what an arbitrator is likely to do.

The third step, which is feasible only through government-provided machinery or through large-scale industry-wide bargaining, is the provision of at least one level of appeal. If the original arbitrator errs, there should be at least one opportunity for a reversal of the error.

### COLLECTIVE BARGAINING BY GOVERNMENT FIAT

During the Second World War the Federal government assumed the burden of determining contract provisions, with the result that the normal processes of collective bargaining were held in abeyance for several years. The War Labor Board was given absolute powers, and disputing parties soon abandoned any serious attempt at solving their own problems, each hoping to get as much as possible out of a Board decision. In the course of time, standard wage rates and standard contract terms developed as a part of Board policy, with a resulting high degree of uniformity unknown in peacetime. Frequently neither side was happy with the decision but accepted it in a spirit of patriotic desire to win the war. Usually in such cases, however, the parties made the mental reservation to reopen the matter as

soon as the war was ended. This resulted in the accumulation of many stresses and strains, with tensions in some industries so high as to be just below the breaking point. Such harmony as existed was dependent upon the war spirit and the directives of the Board for its continuance.

Suddenly, in August, 1945, the Japanese capitulated and the "shooting war" was over. Leaders of industry and labor realized the dangers inherent in their strained relationship and feared a complete collapse of harmonious industrial relations. Most of them believed that the wartime control of collective bargaining should not be removed abruptly, that some sort of modified machinery should be established to "taper off" controls until free collective bargaining had been actually reestablished. The President of the United States, however, took no action until, after many delays, a labor-management conference was scheduled to be held in November—long after the period of its possible usefulness had gone by. Meanwhile, in October, he deprived the War Labor Board of its power to issue directive orders and indicated that the Board itself would pass out of existence in December. The expected strike wave began even before the futile labor-management conference was held, and during the ensuing 15 months approximately seventy million man-days of work were lost because of work stoppages. Employers and union leaders alike were anxious to retain what they had gained and reestablish what they had lost; chaos was inevitable with the sudden lifting of the paternal hand.

Meanwhile the Board's emphasis upon standardized practice had brought about an extension of nationwide, region-wide, or industry-wide bargaining. As a result an unusually large number of the strikes were not little local affairs but were geographically extensive. The public was more seriously injured by these vast upheavals than by local disputes, and the pressure for corrective legislation became strong. The Federal administration tried to regain some measure of control through the appointment of fact-finding boards, but these were given no authority to make an award. The Congress showed signs of becoming bitter and vindictive, adopting a punitive position much less suited to promoting industrial peace even than the inaction of the Presi-



dent. The fears entertained by industry and labor in 1945 had been realized; by the end of 1946 there were new and perhaps greater fears—the fears of a return to government controls.

These fears were realized when, in June, 1947, the Congress passed over the President's veto the Taft-Hartley Bill, officially designated as the Labor Management Relations Act of 1947. In this elaborate piece of omnibus legislation, a Congress pledged to free enterprise completely reversed itself and prescribed minute restrictions upon the freedom of both employers and employees and apparently designed to remove significant segments of the process of negotiation from the area of free collective bargaining and assign them to the jurisdiction of the National Labor Relations Board and the courts. Advocates of free collective bargaining were immediately on the defensive.

#### CITIZENS' LABOR-MANAGEMENT COMMITTEES

Government agencies and policies tend to crystallize into rigid forms; these forms are then abruptly shifted following a change in political fortunes. Statutes are inevitably generalized principles and usually lack the flexibility necessary for adjustment to the particular problems of labor-management relationships. Chiefly for these reasons, large groups among both industrial and labor leadership became convinced that free collective bargaining is superior to public regulation. In an effort to provide the means whereby industry and labor can resolve their own disputes and so make public intervention unnecessary, a number of experiments in so-called "citizens' labor-management committees" have been made. In the last century, in Chicago, the National Civic Federation had attempted with some success to settle disputes. It failed only when it lost its nonpartisan reputation and became looked upon as an employer group. Other successive experiments in other cities failed for the same reason—they were one-sided.

In the height of the turmoil of 1945 and 1946 a new plan, guaranteed to remain nonpartisan, was evolved in Toledo, Ohio. Louisville, Ky., followed shortly afterward with a similar plan. The key to its unbiased lies in the equal number of industry and

labor members on the committee. In the Toledo Labor-Management-Citizens Committee the tripartite idea of the War Labor Board was followed: six members represent labor, six represent industry, and six represent the public. Although it is an official committee appointed by the mayor and financed by the city treasury, it has no power to issue directive orders. It can offer only the services of mediation and voluntary arbitration. However, it has informal powers which are very great, especially in a middle-size city. Its members are acknowledged leaders of the community, and their personal prestige is great. Analysis of the situation usually leads them to agreement regarding many if not all of the phases of a dispute, and when they agree they can exert a powerful influence upon the disputants to reach a solution short of work stoppage.<sup>5</sup>

#### AVOIDANCE OF GOVERNMENT FIAT

Justice Oliver Wendell Holmes pointed out the distinction between avoiding and evading a law. In avoidance, contrasted with evasion, there is no attempt to secure by legal means a purpose that was intended to be illegal. Since so very many spokesmen for both management and labor are distrustful of governmental interference with collective bargaining, they seek methods of avoiding the impact of such a statute as the Labor Management Relations Act of 1947. The first significant agreement signed after the Act went into effect was in the soft-coal industry. Among other provisions the parties agreed to settle their grievances and other difficulties by arbitration. In thus binding both parties to refrain from appealing to the machinery of the National Labor Relations Board, the intervention of that agency is avoided. The agreement is also binding upon the miners only so long as they are "willing and able to work," thereby freeing them of possible charges of engaging in illegal strikes. In this unintended fashion, the Act provides an actual stimulus to free collective bargaining. Indeed, it rejuvenates an other-

<sup>5</sup> A brief but useful analysis of such plans is found in Roy H. Owsley, *City Plans for Promoting Industrial Peace*.

wise waning interest in arbitration. In addition, it gives a real purpose to the city committees described in the preceding section.

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## Part Three

### LABOR, MANAGEMENT, AND THE PUBLIC

This volume has thus far concerned itself chiefly with the direct relations of labor and management. Only occasionally has it been pointed out that these relations always have an impact upon the environing economy. As unions have grown in size and power during recent years and as industrial organizations have expanded toward nationwide significance, the interest of the public in their harmonious relations has inevitably increased. While it is true that government has always found itself obliged to interfere with labor-management relations, recent events have elevated the public interest to paramount status. Part Three will survey and evaluate the interlocking relationships of labor, management, and the public as represented by government.



## *Chapter 13*

### *THE PUBLIC INTEREST*

#### WHO IS THE PUBLIC?

In daily conversation, in literature, and in government administration, it is frequently necessary to refer to the interest of the public in labor-management relations. The War Labor Board (1942 to 1945) was tripartite in organization. Its members represented Labor, Industry, and the Public. Since the bulk of the national population is composed of employees and employers, many of the so-called Public Members had moments of wondering just whom they represented. In all likelihood few of them found a satisfactory answer. Indeed, it seems probable that no wholly satisfactory answer can be given. And yet there are a public and a public interest. If a work stoppage were to close down the operations of the New York water system, the effect upon the public (the inhabitants of the city) would be immediate and drastic. The public would include everyone deprived of water, excluding only the persons making up the management and union directly involved in the dispute. In wartime the primary public interest is military victory; in a labor-management dispute then occurring, the public includes the entire nation excepting only the parties to the controversy.

Analogies are always imperfect, but for purposes of illustration a labor-management dispute may be compared to a war between two nations, each jealous of its sovereign powers. They may be small nations, in which case the effects of their quarrel are felt chiefly by their geographical and economic neighbors. If, however, they are large nations, the entire international



balance may be upset. Assume a war that starts between two small nations but gradually draws in others, spreading to an eventual inclusion of the greater part of the world. At the beginning, all but the disputants are nonbelligerent; many are completely neutral. In the former group are those whose interests indicate a preference for one side to win. In the second group are those without direct interests and therefore indifferent as to the outcome. But as the war spreads through the mutation of nonbelligerents into belligerents, the interests of former neutrals begin to be affected and they are themselves transformed into nonbelligerents. This process may continue until the whole world is engulfed. A markedly similar pattern, complete with nonbelligerents and neutrals, may characterize labor-management disputes. Companies and unions that have a close connection with the quarreling parties will feel a partisan interest in the outcome and may be drawn into active participation. Others will remain indifferent, feeling that it is no affair of theirs until and unless their own interests become involved. In these cases the term "public" would certainly include all the neutral parties and probably all the nonbelligerents who are remaining genuinely aloof. In the typical dispute, therefore, the public includes many employers and many unionists. Probably no more precise definition of the public (as it appears in labor-management relations) can be given than that it includes all those not involved in the case at hand.

Since the public includes the majority of the nation and the nation is a political democracy, it follows that the public is sovereign. That is to say, it possesses supreme authority. Even though it may not always be omniscient, it is omnipotent. But since it is made up of heterogeneous groups, it seldom is unanimous in determining its course of action. This is both the weakness and the strength of democracy and the reason why it moves so haltingly in determining its "labor policy." Ordinarily the public as such does not intercede in industrial disputes, but when it does decide to do so, it may follow any course of action which it elects to pursue.

## RIGHTS AND PRIVILEGES

Life, liberty, and the pursuit of happiness are characterized in the Declaration of Independence as "inalienable rights." That this was intended to mean "proper" rights, or rights which *should be unalienable*, is suggested by the proposition that immediately follows—that "to secure these rights, Governments are instituted among Men. . . ." Rights can be violated; men must contrive governments to ensure their sanctity. Beyond life, liberty, and the pursuit of happiness those principles which are commonly called "rights" are more correctly identified as "privileges," that is, they are conferred upon individuals by the will of the nation (in a democracy, the majority) and may be removed by the same authority that confers them.

Viewed in this light, there are no absolute rights attaching to either Labor or Industry as such. No one has the "right to work," the "right to strike," or the "right to manage business." They have these privileges only in so far as they are conferred by society. Of course, society may consider them as vitally important privileges and may safeguard them so as to make them temporarily inviolable. But the will of the majority must have supremacy over all privileges. Those who have faith in the validity of the democratic principle can reach no other conclusion.

The so-called "right to work" has come to refer to the alleged right of any individual to secure employment whether or not he is a member of a union. In other words, it is an open-shop slogan. As a matter of fact, it exists as neither right nor privilege and apparently has never existed. Under the law any person may apply for any job, but no applicant has any legal claim upon any job unless the employer has already entered into a contract to that effect. In practice, employers have always defended their privilege of refusing to employ any applicant for any reason or even for no reason. Among the reasons, and philosophically as valid as any other, is an agreement between the employer and a union that no person not a member of the latter shall be hired. Thus any legislation that is designed to outlaw the closed shop is

in reality an infringement upon the privileges of employers to make any stipulation which they wish with regard to the eligibility of candidates for employment. Many employers have failed to recognize this fact because they have unwillingly signed closed-shop agreements and have therefore sought such legislation to protect them from union pressure. However, the fact remains that prohibition of a closed shop represents the first step in restricting an employer's freedom in this regard, and as a precedent it could easily become the first leak in the dike. On the other hand, there is no legal tradition guaranteeing a nonunion worker any special job opportunities. To the contrary, there is plenty of precedent supporting the proposition that membership in an association is a prerequisite to preferred employment. In the medical and legal professions, such affiliation is virtually required. In a number of instances employers' associations have sought to coerce individual employers to enter and maintain membership. That they may have been less successful than unions is irrelevant. In actuality there is no "right to work," and in seeking employment a union member has no privilege superior to that of the nonunion worker unless the employer has agreed to it. That he may have unwillingly agreed is as inconsequential a fact as that his customers may have unwillingly paid the price which he asks for his product. If he has a strong monopoly position, selling a product with a highly inelastic demand, he may secure a grudging payment of his prices. Unless he is willing to be consistent and invalidate such unwilling contracts, the employer must accept the validity of labor agreements which he enters reluctantly.

Similarly, there is no unqualified right to strike. The privilege of striking is based fundamentally upon the right to liberty, according to which no person should be compelled to work if he doesn't want to (except as a punishment for crime). This right only entitles him to quit his job, and a strike, as has been seen in previous chapters, is very different from a mass quitting of work. Because of a desire that workers not be oppressed, society has conferred upon workers the privilege of striking. The organized withholding of work without quitting is the only substantial weapon available to workers, and therefore the privilege can be

easily justified. However, it still remains a privilege that can be modified or taken away if the majority of the voters so desire. Democracies may vote to commit national suicide; it seems likely that they have done so more than once in the history of the world. The Germans did so when they voted the Nazi party into power. If a nation may go that far, it may go a lesser distance and withdraw the freedom of association from among working people. Because it can do so, of course, does not make the action correct or in the long run desirable.

Union leaders are apt to make an emotional defense of the term "right to strike" and to insist that it is a right rather than a privilege. Strategically they are justified. Striking is a fundamentally important privilege—one upon which the very existence of unionism as it is now known depends. If, in the minds of the union membership, the privilege can be enhanced to the sanctified level of a right, it is in less danger of infringement. However, these same leaders must not forget that political dictators in other countries have shown that it is a privilege and have abolished it. Excessive abuse of the privilege in this country may lead to catastrophe.

This also holds true with the prerogatives of management. Employers as employers have no inalienable rights. The industrial buccaneers of the last half of the nineteenth century felt, apparently, that their right to liberty included the privilege of doing as they pleased no matter how much suffering might be caused to others. Gradually, in both law and custom, the broad privileges assumed by management were whittled down to size. It must be clear that what employers may believe to be rights are actually privileges conferred by society. In Russia, revolution removed those privileges from employers, and one of the major reasons for that action was the historic abuse of the privilege by both employers and the Czarist government.

A large part of the instability of the economy of contemporary America arises out of the necessity for maintaining a balance among the privileges assumed by different major groups. In spite of the stolid and permanent look of factories and cities, the current economy is highly volatile, and therefore changes in the balance of privileges cannot safely be made without the greatest

circumspection. During the last half of the nineteenth century, in the United States, employers assumed unreasonable privileges, and the result was turmoil. Had this not been a young nation with unlimited resources and free lands in the West it might have led to catastrophe. Slowly the employers' privileges were restricted as those of labor were broadened, until, by the end of the Second World War, they were fairly evenly balanced. The maintenance of a workable balance is prerequisite to the survival of the system of American free enterprise.

### THE PUBLIC AS EMPLOYER

The public, through its hierarchy of governments, acts as an employer in a wide variety of ways. It operates almost every kind of industry, provides a multitude of services, and administers itself. Civilians employed by the Federal government alone numbered over two million in early 1947; nearly this many more are employed by state and local governmental agencies. Still thousands more are indirectly employed by the government, that is, they are immediately employed by a private concern operating under contract to government. This adds up to such an enormous total that the public attitude toward the privileges of public employer and its employees becomes of major consequence.

Singularly enough, union leaders who have insisted upon the "right" to strike have offered little objection to the assumption that public employees do not have this right. In the Labor Management Relations Act of 1947 the Federal Congress explicitly denied the privilege of striking to all Federal employees. A great number of state and local governments have established the same rule, either by legislative or administrative action. The principle upon which this limitation is based is fairly obvious: government represents the sovereign people; a strike is a coercive method of obtaining concessions; sovereignty can be neither coerced nor can it make concessions. Some speakers have even asserted that a strike of public employees is equivalent to rebellion. When a strike of public employees is prohibited by law and in so far as a mass defiance of the law constitutes rebellion, these

demagogues are of course correct. But strikes against public authority are not always against the law, nor is it certain that the law is a proper one and will not be changed. It might well be safer for the future of democracy if such strikes were not declared to be rebellions. As an employer of industrial labor, a government is functioning not as a government but as an employer. The terms of the labor contract are not made by the sovereign people but by administrative officials who in most cases have been appointed and are remote from the elected representatives of the voters. Governmental machinery is cumbersome, and it is usually a fact that workers have no way of calling public attention to their grievances other than by a strike. If actual oppression is to be avoided, workers must have some method of resisting possible whimsicalities of arbitrary officials. If public employees not engaged in critically essential work are to be denied the privilege of striking, therefore, it is imperative that there be substituted some adequate method of adjusting disputes and of settling grievances. A system of arbitration, with the possibility of appeal, would probably serve.

In some public services, such as are involved in the operations of a fire department or a municipal water system, the privilege of striking must be curtailed in the interest of life and health. Employees working in such services generally recognize this fact, and their unions ordinarily prohibit strikes in their constitutions or by-laws. Where the unions take the initiative in this fashion, legislation is superfluous, but some means of adjusting employer-labor problems is still necessary. It seems probable that if such a means were provided, all relevant unions would ban strikes voluntarily. It may be taken as a democratic axiom that cooperative measures are always preferable to coercion. It ill befits a democratic government to abandon the tactic of reasoning with its own people and resort to irresponsible force.

There is no basis for distinguishing an elevator operator working in a government building from one employed privately. The need for his service is not necessarily greater. There is no difference between a lineman employed by a municipal electric project and a lineman working for a private power company. A printer employed by a state university press is engaged in no

more vital work, surely, than one employed by a private daily newspaper. Limitations upon the privilege of striking, therefore, should not be based upon the public or private character of ownership, but upon the inherent essentiality of the service performed. And where limitations are really justifiable, some alternative method of adjusting grievances must be created.

### THE PUBLIC AS VICTIM

As has been pointed out, the public cannot tolerate the cessation of such essential services as the flow of water and electricity. In other cases, such as telephone and transportation service, it cannot tolerate an extended cessation. The limit of toleration depends, of course, on the circumstances of each case. But the public cannot be expected to sit placidly by and die of thirst or starvation while management and labor fight out their problems. It is conceivable, in some of these disputes, that labor's claim is wholly justified and that management is wholly in the wrong. If so, public pressure should presumably be upon management rather than on labor. But in practice its insistence that a strike be terminated may penalize labor and ensure a victory for management. However, the public has no way of making an accurate judgment of the merits of the dispute and, faced with a crisis, can only demand that work be resumed, the merits to be judged later.

Even where the industry is not of critical importance, the public is always in a limited sense an unwilling victim of labor-management disputes. It is perhaps impossible to imagine a strike so small and inconsequential that not a single outsider is injured by it. The various units which make up the economy are so interrelated that everything affects everything else. Although the repercussions of a small work stoppage may be hard to trace, they nevertheless exist. But it does not follow that the public, through its government, must ban all work stoppages. Although the economy is interrelated, it is also competitive, which is to say that its functioning is based upon the presence of friction. And to eliminate the friction would destroy the economy. An automobile may be raised on blocks to eliminate the friction

arising out of the motion of tires upon the road, but the automobile would then cease to perform its function of transportation. So also may there be friction arising out of the competition between two grocery stores. This may in some way injure the public. But the gain to the public welfare may be greater than the loss.

To the public, likewise, the gain resulting from the correction of an unbalanced labor contract through the medium of a strike may more than offset the inconvenience attendant upon the strike. Even a big strike may be preferable to the maintenance of democracy than a curtailment of the status of workers as free men and women. In this sense, the public is gainer as well as victim. The problem is not one of finding ways and means of curtailing individual and group freedom, but of finding a method to retain economic democracy with a minimum of friction. To separate the gears of a car so far that they do not mesh will eliminate wear and tear but will also stop the car. To lubricate the cogs will enable the car to operate with a minimum of friction. And the more efficient the lubrication, the better the result.

### UNION DEMOCRACY

In the argument of the preceding paragraphs it is assumed that the unions represent free men and women, and the inference from this assumption is that the unions are themselves democratic. Generally, and with a few unfortunate exceptions, this is correct. It is of course true that most large unions are unable to operate in the "town-hall" fashion, and it has frequently been assumed by casual observers that all unions are run by dictators. The assumption is unwarranted since the membership of any union may at any time overthrow a dictatorial officer. Where such an official remains in office it is either because the membership wants him or because it is indifferent and hence apathetic at elections. Whether or not democratic action takes place is not as important as the fact that it is always potential.

It must be remembered that a union is not a strictly economic institution. The general public, along with many of the professional economists, has characteristically made the error of con-



sidering only the economic aspects of labor organization and hence has failed to understand the impact of unionism upon such essentially economic matters as wages. But, fundamentally, a union is a political entity within itself. A strike for a wage increase of 1 cent an hour may appear to cost more than could possibly be gained but may actually be justified on strategic grounds as a means of maintaining the organizational integrity of the union. An official may justify political manipulation in order to keep himself in office on the valid ground that continuity of leadership is desirable. In brief, unions are political, sociological, psychological, and philosophical as well as economic in their structure and function. This is a necessary condition of their democratic obligation to the workers and to the nation. The fact that union officials try to keep themselves in office is neither more undemocratic nor more reprehensible than the fact that presidents, senators, congressmen, and other office holders of the United States government seek to retain their seats.

### INDUSTRIAL PEACE

It must now be apparent that industrial peace, alone and unqualified, is not necessarily a desirable goal of labor-management relations. Political peace reigned in the Western world during the centuries of Roman domination, and was known as the *pax romanum*. It was maintained by the iron force of the Caesar's legions; the frequent rebellions of the conquered barbarians were suppressed with ruthless promptness. And Adolf Hitler's unattained goal, presumably, was a *pax germanicum*: a thousand years of "peace" in which the peoples of the world would labor for the welfare of the master race. A similar sort of spurious peace could exist if unions were abolished and if employers were to assume absolute power over the conditions of work for their employees.

But friction, contest, and even struggle are vitally necessary parts of a healthy economy. Without free bargaining there can be no competition, no economic democracy, no free enterprise. And knowledge of the social sciences is as yet insufficient to obviate the need for proceeding by trial and error. Human nature

being what it is, there are bound to be disagreements over what should be tried and what is an error. The leaders of both labor and industry make all of the mistakes of which human beings are capable. But they serve as checks upon each other and, unlike Caesars and Hitlers, do not possess the power of freezing their mistakes into universal law. And so the seeming inefficiency of democracy is actually its greatest strength.

Charles Dickens observed that it is a good thing men don't all think alike "because if they did there wouldn't be no horse races." Judgments invariably differ, and fortunately. Unless human beings sink to the puerile level prophesied by H. G. Wells in *The Time Machine*, they will continue to quarrel, to assert their independence, to engage in bravado and bombast, to maneuver and manipulate, and finally to compromise. To expect men to stop grumbling is as futile as to expect rivers to run uphill.

Once these considerations are placed in the balance it becomes clear that industrial peace by law or directive or by the placing of overwhelming power on one side or the other is far from being an unmixed blessing. It is by disagreement that a dynamic economy grows and progresses. It is by free collective bargaining that the problems of labor-management relations are worked out.

### THE PUBLIC AS PARTICIPANT

On occasion employers and union officers have alleged that their disputes are private affairs and that outsiders have no concern with them. This is of course erroneous since each part of the economy must inevitably affect every other part. On the other hand, there is often a measure of truth in the allegation. That is to say, outsiders are unlikely to make a satisfactory settlement if they are empowered to act coercively. Willy-nilly the public is a participant in every labor dispute. But that fact does not clothe the public with omniscience; it does not qualify it to impose arbitrary action upon the other participants unless the dispute is immediately imperiling the safety of the public.

Throughout American history the public, through its legislature and judiciary, has been participating in labor-management relations. Until the Massachusetts case of *Commonwealth v.*

*Hunt* (1842) the common law assumed unions and their activities to be illegal. Even that famous case did not establish the legality of unionism—it was simply the first small crack in the restrictive doctrine. Roughly speaking, throughout the nineteenth century the public, through its courts, was arrayed on the side of the employer. The legal cards were stacked so that labor couldn't win. And this was in spite of the fact that "equality before the law" was a fundamental tenet of the American system. The worker, as a comparatively poor man, was unable to afford the best of legal counsel which was available to the relatively rich employer. Unions, although permitted to exist, had no standing in the courts, and hence the worker stood alone. His plight was an old one.

Through tatter'd clothes small vices do appear;  
Robes and furr'd gowns hide all. Plate sin with gold,  
And the strong lance of justice hurtless breaks;  
Arm it in rags, a pygmy's straw doth pierce it.<sup>1</sup>

Anatole France made the point with less eloquence but more succinctness: "The law in the majesty of its equality forbids the rich as well as the poor to beg, to steal, and to sleep under bridges." Even today, the nonunion worker, with no one to represent him, must still pay for the crime of his poverty.

When, in the latter third of the century, unions became strong in spite of legal persecution, employers and the courts turned to the injunction as an expeditious method of restraining labor organization. The injunction is a court order forbidding the enjoined party from continuing to follow a specific course of action. It is designed to prevent irreparable injury from occurring, and employer-minded judges were free in their interpretation of "irreparable injury."

In the twentieth century there has been a strengthening of the legal status of unions and of their activities. The right of a union to exist and to perform its principal functions is now unquestioned. The legal battles now rage over the details of those functions.

<sup>1</sup> Shakespeare, *King Lear*, Act IV, scene 6.

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## *Chapter 14*

### *NATIONAL LABOR POLICY*

#### **TOWARD EMPLOYMENT AND WAGES**

Not until the administration of President Franklin D. Roosevelt did the Federal government accept any responsibility for employment and wages in private industry. The monumental economic depression which prevailed at the time he took office had stripped off the veneer which had created the illusion that economic anarchy was an economic system. Industrial leaders were helpless and bewildered; the self-assurance of the American people was temporarily shattered. Under Roosevelt's leadership the National Industrial Recovery Administration (1933) attempted to raise prices and wages simultaneously. The Social Security Act established the principle of unemployment compensation as a normal public function. And the National Labor Relations Act guaranteed the privilege of workers to organize. All these actions were attacked, and all met with fluctuating success. But their immediate accomplishments were far less important than the fact that, with each of the three, a principle became imbedded in the American scheme of things. It is likely that governmental leaders will never again be able to assert that they have no concern with prices, wages, employment, unemployment, and unionism. While there was no national labor policy prior to 1933, it is now an integral part of over-all policy and must continue to remain so.

This chapter is not an attempt to draft a blueprint for a Federal labor policy. The three-way relations of labor, management, and the public are human relationships, constantly changing and

evolving. Consequently, a rigid policy would soon be obsolete. For this reason, blueprints are less in order than guideposts or beacons upon which to steer a course. Policy as such must be permanently tentative, but the day-by-day decisions must be made in the light of enduring principles.

First, it is now recognized that the movements of price and wage levels are of direct concern to the entire nation and that government can no longer look upon them as being beyond its sphere of interest. It must be admitted that neither is satisfactorily understood as yet; both are now the subjects of intricate and technical debate. Second, it cannot now be denied that full employment cannot be maintained by trusting to luck. Whether one wants it or not, Federal fiscal policy affects employment for good or ill, and it is only sensible that the former be chosen. This, too, is far from clearly understood. With regard to both of these, the prevailing doctrine has been indicated in Part One.

### TOWARD UNIONISM

Among the larger aspects of modern American civilization the economic and political are significantly pervasive. By contemporary conviction as well as by historical tradition the nation is committed to political democracy. But it took long and bitter experience to learn that political democracy is a hollow mockery unless it is built upon a sound foundation of economic democracy. Indeed, politics and economics are so inextricably interwoven that it is usually difficult to discuss one while excluding the other. It is misleading even to refer to economic democracy as being something disparate from political democracy. Perhaps the proper term is "politico-economic democracy."

The basic authority of any democracy is the will of the people, and it is inevitable that they band together into homogeneous groups in order to articulate that will. Among those groups are labor unions. Their members (and their families) purchase over two-thirds of the consumers' goods sold in the nation and pay about forty per cent of the taxes. Their wages constitute a major share in the national income. They produce not only economic goods but their share of thought, beauty, and art. To prevent

them from speaking as one when they have matters in common is possible only in a totalitarian state. In small groups, they have in common the conditions of the job.

If these statements are correct, Federal policy cannot be otherwise than friendly to the principle of unionism. This does not imply that it must be friendly to anything that any union may do or to any activity of any labor leader. But it must support and defend the basic principle of unionism—free collective bargaining.

### GOVERNMENTAL COERCION

At various times in American history, government has attempted the operation of formal agencies empowered to settle labor-management disputes arbitrarily. The Kansas Industrial Court Act of 1920 was such an attempt, and it failed amidst the most turbulent confusion. The War Labor Disputes (Smith-Connally) Act of 1943 included complicated anti-strike provisions which proved themselves to be generally unenforceable. The Labor Management Relations (Taft-Hartley) Act of 1947 included a conglomeration of unintelligible provisions designed to regulate many of the details of collective bargaining. It seems unlikely that this act, as written, can be any more successful than the Smith-Connally Act.

The fundamental reason for these failures is that, in a democracy, a major segment of the population cannot long be coerced against its wishes. The immediate result is to throw the whole matter of labor-management relations into politics. There is a great enhancement of the importance and desirability of a political office when it acquires the power to dictate the terms of labor relations. Unions are brought into partisan politics whether they want to or not. And it is not impossible that democracy could be obscured or even forced to disappear.

To forbid workers to strike is not analogous to forbidding burglars to steal. In the first place, this is not a nation of burglars. If it were, prohibitions of burglary would undoubtedly be markedly unsuccessful. In the second place, the burglar and his victim do not hope to enjoy a continuing relationship. The burglar hopes only to get his loot and escape. The victim hopes

only to recover his property, see the burglar in jail, and then forget him if possible. But labor and management must continue to work and live together. A strike is only one phase of the endless process of collective bargaining; after it is settled the employees go back to work and both sides strive to maintain a smooth and peaceful relationship. This is hardly possible when either side has been forced into defeat by the intervention of an outside party. This is particularly true when the outside party is avowedly on the side of the victor.

Another reason for the inevitable failure of legal coercion is the changeableness of the nature of labor relations. A statute directed against strikes assumes that the present form of a strike is the only form, that other types of equally effective economic action are not available. Largely out of custom, strikes have assumed a standardized form and procedure, but it is stupid to assume that the forms are immutable. It is reported that on one occasion streetcar platform men, prohibited from striking, performed all their duties with the exception of collecting the fares. The company could not discharge them all for insubordination because it could not replace them. It accordingly entered promptly into negotiations and granted the workers their demands. No strike had occurred, and yet economic action fully as effective had taken place. In another instance, irreplaceable employees did not strike but quit their jobs one by one and accepted employment elsewhere. The employer, desperate for help, was obliged to raise the wage rate even higher than had originally been asked in order to attract his old employees back to their old jobs. These are simple cases; there are thousands of variations. In 1947, John L. Lewis of the Mine Workers secured the coal operators' assent to a provision that seeks to eliminate the possibility that the miners could ever be accused of striking. They are obliged to work under the contract only when they "are willing and able." If they are unwilling to work, they can stop work without violating the agreement and presumably are not engaged in a strike.

Coercive legislation is based on the erroneous belief that government can do anything. During the Roosevelt administration the Republicans criticized the Democrats for assuming that gov-



ernment is omnipotent. But as soon as they took over the control of Congress in 1946 they became guilty of making the same assumption. In labor relations, this assumption took the tangible form of the Taft-Hartley bill. President Truman and his Democratic colleagues made the same criticism of this bill that Senator Taft and his colleagues had made of the Roosevelt program—that it interfered with the rights of free people. Even as cursory a study of history as a politician might have time to make should reveal the rather obvious fact that government is not omnipotent and that it cannot settle the private quarrels which develop in any sphere of activity.

### THE PSEUDO LAW OF COLLECTIVE BARGAINING

The common law as it stands today is the product of an evolutionary process. Precedent has been built upon precedent, but ever modified by changing conditions and the fluctuating temper of the times. A similar process is now discernible in the development of collective-bargaining practice. Arbitrators as well as negotiators frequently refer to precedent; adjustments are made in accord with changed conditions and altered philosophies. Experienced private arbitrators are more readily available than ever before. Significant agreements and awards are regularly published and may be consulted by anyone who chooses to do so. Growing out of the “grass roots” is a pseudo common law of labor relations—a body of experience modified by changing circumstances. This is the healthiest sign on the labor weather chart. But good health is not maintained by weather alone; the parties involved must remain free and active. The job of government is not to conduct the details of labor-management relations but to remove the obstacles that interfere with the normal course of free collective bargaining.

# APPENDIX I

[PUBLIC LAW 304—79TH CONGRESS]

[CHAPTER 33—2D SESSION]

[S. 380]

## AN ACT

To declare a national policy on employment, production, and purchasing power, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SHORT TITLE

SECTION 1. This Act may be cited as the "Employment Act of 1946."

### DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy, with the assistance and cooperation of industry, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power.

### ECONOMIC REPORT OF THE PRESIDENT

SEC. 3. (a) The President shall transmit to the Congress within sixty days after the beginning of each regular session (commencing with the year 1947) an economic report (hereinafter called the "Economic Report") setting forth (1) the levels of employment, production, and purchasing power obtaining

in the United States and such levels needed to carry out the policy declared in section 2; (2) current and foreseeable trends in the levels of employment, production, and purchasing power; (3) a review of the economic program of the Federal Government and a review of economic conditions affecting employment in the United States or any considerable portion thereof during the preceding year and of their effect upon employment, production, and purchasing power; and (4) a program for carrying out the policy declared in section 2, together with such recommendations for legislation as he may deem necessary or desirable.

(b) The President may transmit from time to time to the Congress reports supplementary to the Economic Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 2.

(c) The Economic Report, and all supplementary reports transmitted under subsection (b), shall, when transmitted to Congress, be referred to the joint committee created by section 5.

#### COUNCIL OF ECONOMIC ADVISERS TO THE PRESIDENT

SEC. 4. (a) There is hereby created in the Executive Office of the President a Council of Economic Advisers (hereinafter called the "Council"). The Council shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 2, and to formulate and recommend national economic policy to promote employment, production, and purchasing power under free competitive enterprise. Each member of the Council shall receive compensation at the rate of \$15,000 per annum. The President shall designate one of the members of the Council as chairman and one as vice chairman, who shall act as chairman in the absence of the chairman.

(b) The Council is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for the carrying out of its functions under this Act, without regard to the civil-service laws and the Classification Act of 1923, as amended, and is authorized, subject to the civil-service laws, to employ such other officers and employees as may be necessary for carrying out its functions under this Act, and fix their compensation in accordance with the Classification Act of 1923, as amended.

(c) It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Economic Report;

(2) to gather timely and authoritative information concerning economic developments and economic trends, both current and prospective, to analyze and interpret such information in the light of the policy

declared in section 2 for the purpose of determining whether such developments and trends are interfering, or are likely to interfere, with the achievement of such policy, and to compile and submit to the President studies relating to such developments and trends;

(3) to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 2 for the purpose of determining the extent to which such programs and activities are contributing, and the extent to which they are not contributing, to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national economic policies to foster and promote free competitive enterprise, to avoid economic fluctuations or to diminish the effects thereof, and to maintain employment, production, and purchasing power;

(5) to make and furnish such studies, reports thereon, and recommendations with respect to matters of Federal economic policy and legislation as the President may request.

(d) The Council shall make an annual report to the President in December of each year.

(e) In exercising its powers, functions and duties under this Act—

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, as it deems advisable;

(2) the Council shall, to the fullest extent possible, utilize the services, facilities, and information (including statistical information) of other Government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided.

(f) To enable the Council to exercise its powers, functions, and duties under this Act, there are authorized to be appropriated (except for the salaries of the members and the salaries of officers and employees of the Council) such sums as may be necessary. For the salaries of the members and the salaries of officers and employees of the Council, there is authorized to be appropriated not exceeding \$345,000 in the aggregate for each fiscal year.

#### JOINT COMMITTEE ON THE ECONOMIC REPORT

SEC. 5. (a) There is hereby established a Joint Committee on the Economic Report, to be composed of seven Members of the Senate, to be appointed by the President of the Senate, and seven Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. The party representation on the joint committee shall as nearly as may be feasible reflect the relative membership of the majority and minority parties in the Senate and House of Representatives.

(b) It shall be the function of the joint committee—

(1) to make a continuing study of matters relating to the Economic Report;

(2) to study means of coordinating programs in order to further the policy of this Act; and

(3) as a guide to the several committees of the Congress dealing with legislation relating to the Economic Report, not later than May 1 of each year (beginning with the year 1947) to file a report with the Senate and the House of Representatives containing its findings and recommendations with respect to each of the main recommendations made by the President in the Economic Report, and from time to time to make such other reports and recommendations to the Senate and House of Representatives as it deems advisable.

(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

(d) The joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings as it deems advisable, and, within the limitations of its appropriations, the joint committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistants, to procure such printing and binding, and to make such expenditures, as it deems necessary and advisable. The cost of stenographic services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 25 cents per hundred words. The joint committee is authorized to utilize the services, information, and facilities of the departments and establishments of the Government, and also of private research agencies.

(e) There is hereby authorized to be appropriated for each fiscal year, the sum of \$50,000, or so much thereof as may be necessary, to carry out the provisions of this section, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman or vice chairman.

Approved February 20, 1946.

## APPENDIX II

[PUBLIC—No. 198—74TH CONGRESS]

[S. 1958]

### AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impair-

ment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

#### DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between

points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133<sup>1</sup> approved June 14, 1935.

#### NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all

<sup>1</sup> So in original.



employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of \$10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry

out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

#### RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

#### REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective

bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain<sup>1</sup> such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

#### PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

<sup>1</sup> So in original.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable

grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(1) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

## INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegram or by leaving a copy thereof at the principal office or

place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

#### LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (1) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (1) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

## APPENDIX III

[PUBLIC LAW 101—80TH CONGRESS]

[CHAPTER 120—1ST SESSION]

[H. R. 3020]

### AN ACT

To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.



## TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

“FINDINGS AND POLICIES

“SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

“The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

“Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

“Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

“It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organ-

ization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

“DEFINITIONS

“SEC. 2. When used in this Act—

“(1) The term ‘person’ includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

“(2) The term ‘employer’ includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

“(3) The term ‘employee’ shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

“(4) The term ‘representatives’ includes any individual or labor organization.

“(5) The term ‘labor organization’ means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

“(6) The term ‘commerce’ means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

“(7) The term ‘affecting commerce’ means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

“(8) The term ‘unfair labor practice’ means any unfair labor practice listed in section 8.

“(9) The term ‘labor dispute’ includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

“(10) The term ‘National Labor Relations Board’ means the National Labor Relations Board provided for in section 3 of this Act.

“(11) The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

“(12) The term ‘professional employee’ means—

“(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

“(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

“(13) In determining whether any person is acting as an ‘agent’ of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

## "NATIONAL LABOR RELATIONS BOARD

"SEC. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

"(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

"(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

"SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of \$12,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not

employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

"(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

"SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

"SEC. 6. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

#### "RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

#### "UNFAIR LABOR PRACTICES

"SEC. 8 (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

"(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the



representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

#### "REPRESENTATIVES AND ELECTIONS

"Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

“(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

“(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.

“(3) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

“(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

“(1) the name of such labor organization and the address of its principal place of business;

“(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded \$5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

“(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

“(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes

in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

“PREVENTION OF UNFAIR LABOR PRACTICES

“SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

“(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C).

“(c) The testimony taken by such member, agent, or agency or the Board

shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

“(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

“(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts

business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

“(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings

and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

“(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board’s order.

“(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled ‘An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,’ approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

“(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

“(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

“(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

“(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investiga-

tion, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

#### "INVESTIGATORY POWERS

"SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

"(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its



opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

"(2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

"(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

"(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

"(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

"SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

#### "LIMITATIONS

"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

"SEC. 15. Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U. S. C., title 11, sec. 672), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

"SEC. 16. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

"SEC. 17. This Act may be cited as the 'National Labor Relations Act.'"

#### EFFECTIVE DATE OF CERTAIN CHANGES

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-

bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

## TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to

employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service," except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of \$12,000 per annum. The Director shall not engage in any other business, vocation, or employment.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor," approved March 4, 1913 (U. S. C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or

any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

#### FUNCTIONS OF THE SERVICE

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

SEC. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

- (1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

- (2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference

to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

SEC. 205. (a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of \$25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

#### NATIONAL EMERGENCIES

SEC. 206 Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of \$50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report

available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

#### COMPILATION OF COLLECTIVE BARGAINING AGREEMENTS, ETC.

SEC. 211. (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

#### EXEMPTION OF RAILWAY LABOR ACT

SEC. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

### TITLE III

#### SUITS BY AND AGAINST LABOR ORGANIZATIONS

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.



(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

#### RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer

has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than \$10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October

15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., title 29, secs. 101-115).

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

#### BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization

or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

#### RESTRICTION ON POLITICAL CONTRIBUTIONS

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

"SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

## STRIKES BY GOVERNMENT EMPLOYEES

SEC. 305. It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency.

## TITLE IV

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS  
AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

SEC. 401. There is hereby established a joint congressional committee to be known as the Joint Committee on Labor-Management Relations (hereafter referred to as the committee), and to be composed of seven Members of the Senate Committee on Labor and Public Welfare, to be appointed by the President pro tempore of the Senate, and seven Members of the House of Representatives Committee on Education and Labor, to be appointed by the Speaker of the House of Representatives. A vacancy in membership of the committee shall not affect the powers of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the original selection. The committee shall select a chairman and a vice chairman from among its members.

SEC. 402. The committee, acting as a whole or by subcommittee, shall conduct a thorough study and investigation of the entire field of labor-management relations, including but not limited to—

(1) the means by which permanent friendly cooperation between employers and employees and stability of labor relations may be secured throughout the United States;

(2) the means by which the individual employee may achieve a greater productivity and higher wages, including plans for guaranteed annual wages, incentive profit-sharing and bonus systems;

(3) the internal organization and administration of labor unions, with special attention to the impact on individuals of collective agreements requiring membership in unions as a condition of employment;

(4) the labor relations policies and practices of employers and associations of employers;

(5) the desirability of welfare funds for the benefit of employees and their relation to the social-security system;

(6) the methods and procedures for best carrying out the collective-bargaining processes, with special attention to the effects of industry-wide or regional bargaining upon the national economy;

(7) the administration and operation of existing Federal laws relating to labor relations; and

(8) such other problems and subjects in the field of labor-management relations as the committee deems appropriate.

SEC. 403. The committee shall report to the Senate and the House of Representatives not later than March 15, 1948, the results of its study and investigation, together with such recommendations as to necessary legislation and such other recommendations as it may deem advisable, and shall make its final report not later than January 2, 1949.

SEC. 404. The committee shall have the power, without regard to the civil-service laws and the Classification Act of 1923, as amended, to employ and fix the compensation of such officers, experts, and employees as it deems necessary for the performance of its duties, including consultants who shall receive compensation at a rate not to exceed \$35 for each day actually spent by them in the work of the committee, together with their necessary travel and subsistence expenses. The committee is further authorized, with the consent of the head of the department or agency concerned, to utilize the services, information, facilities, and personnel of all agencies in the executive branch of the Government and may request the governments of the several States, representatives of business, industry, finance, and labor, and such other persons, agencies, organizations, and instrumentalities as it deems appropriate to attend its hearings and to give and present information, advice, and recommendations.

SEC. 405. The committee, or any subcommittee thereof, is authorized to hold such hearings; to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Eightieth Congress; to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents; to administer oaths; to take such testimony; to have such printing and binding done; and to make such expenditures within the amount appropriated therefor; as it deems advisable. The cost of stenographic services in reporting such hearings shall not be in excess of 25 cents per one hundred words. Subpenas shall be issued under the signature of the chairman or vice chairman of the committee and shall be served by any person designated by them.

SEC. 406. The members of the committee shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the committee, other than expenses in connection with meetings of the committee held in the District of Columbia during such times as the Congress is in session.

SEC. 407. There is hereby authorized to be appropriated the sum of \$150,000, or so much thereof as may be necessary, to carry out the provisions of this title, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman.

## TITLE V

## DEFINITIONS

SEC. 501. When used in this Act—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

(3) The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

## SAVING PROVISION

SEC. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

## SEPARABILITY

SEC. 503. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

JOSEPH W. MARTIN JR.

*Speaker of the House of Representatives.*

A. H. VANDENBERG

*President of the Senate pro tempore.*

IN THE HOUSE OF REPRESENTATIVES, U. S.,

*June 20, 1947.*

The House of Representatives having proceeded to reconsider the bill (H. R. 3020) entitled "An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and em-

ployers, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

*Resolved*, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

JOHN ANDREWS  
*Clerk.*

I certify that this Act originated in the House of Representatives.

JOHN ANDREWS  
*Clerk.*

IN THE SENATE OF THE UNITED STATES,  
*June 23 (legislative day, April 21), 1947.*

The Senate having proceeded to reconsider the bill (H. R. 3020) "An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was

*Resolved*, That the said bill pass, two-thirds of the Senate having voted in the affirmative.

Attest:

CARL A. LOEFFLER  
*Secretary.*



## APPENDIX IV

80TH CONGRESS 1st Session	}	HOUSE OF REPRESENTATIVES	}	DOCUMENT No. 334
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LABOR-MANAGEMENT RELATIONS ACT, 1947

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### M E S S A G E

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT HIS APPROVAL THE BILL (H. R. 3020) ENTITLED THE  
"LABOR-MANAGEMENT RELATIONS ACT, 1947"

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JUNE 20, 1947.—Ordered to be printed

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*To the House of Representatives:*

I return herewith, without my approval, H. R. 3020, the Labor-Management Relations Act, 1947.

I am fully aware of the gravity which attaches to the exercise by the President of his constitutional power to withhold his approval from an enactment of the Congress.

I share with the Congress the conviction that legislation dealing with the relations between management and labor is necessary. I heartily condemn abuses on the part of unions and employers, and I have no patience with stubborn insistence on private advantage to the detriment of the public interest.

But this bill is far from a solution of those problems.

When one penetrates the complex, interwoven provisions of this omnibus bill, and understands the real meaning of its various parts, the result is startling.

The bill taken as a whole would reverse the basic direction of our national labor policy, inject the Government into private economic affairs on an unprecedented scale, and conflict with important principles of our democratic society. Its provisions would cause more strikes, not fewer. It would contribute neither to industrial peace nor to economic stability and progress. It would be a dangerous stride in the direction of a totally managed economy. It contains seeds of discord which would plague this Nation for years to come.

Because of the far-reaching import of this bill, I have weighed its probable effects against a series of fundamental considerations. In each case I find that the bill violates principles essential to our public welfare.

I. The first major test which I have applied to this bill is whether it would result in more or less Government intervention in our economic life.

Our basic national policy has always been to establish by law standards of fair dealing and then to leave the working of the economic system to the free choice of individuals. Under that policy of economic freedom we have built our Nation's productive strength. Our people have deep faith in industrial self-government with freedom of contract and free collective bargaining.

I find that this bill is completely contrary to that national policy of economic freedom. It would require the Government, in effect, to become an unwanted participant at every bargaining table. It would establish by law limitations on the terms of every bargaining agreement, and nullify thousands of agreements mutually arrived at and satisfactory to the parties. It would inject the Government deeply into the process by which employers and workers reach agreement. It would superimpose bureaucratic procedures on the free decisions of local employers and employees.

At a time when we are determined to remove, as rapidly as practicable, Federal controls established during the war, this bill would involve the Government in the free processes of our economic system to a degree unprecedented in peacetime.

This is a long step toward the settlement of economic issues by Government dictation. It is an indication that industrial relations are to be determined in the Halls of Congress, and that political power is to supplant economic power as the critical factor in labor relations.

II. The second basic test against which I have measured this bill is whether it would improve human relations between employers and their employees.

Cooperation cannot be achieved by force of law. We cannot create mutual respect and confidence by legislative fiat.

I am convinced that this legislation overlooks the significance of these principles. It would encourage distrust, suspicion, and arbitrary attitudes.

I find that the National Labor Relations Act would be converted from an instrument with the major purpose of protecting the right of workers

to organize and bargain collectively into a maze of pitfalls and complex procedures. As a result of these complexities employers and workers would find new barriers to mutual understanding.

The bill time and again would remove the settlement of differences from the bargaining table to courts of law. Instead of learning to live together, employers and unions are invited to engage in costly, time-consuming litigation, inevitably embittering both parties.

The Congress has, I think, paid too much attention to the inevitable frictions and difficulties incident to the reconversion period. It has ignored the unmistakable evidence that those difficulties are receding and that labor-management cooperation is constantly improving. There is grave danger that this progress would be nullified through enactment of this legislation.

III. A third basic test is whether the bill is workable.

There is little point in putting laws on the books unless they can be executed. I have concluded that this bill would prove to be unworkable. The so-called emergency procedure for critical Nation-wide strikes would require an immense amount of Government effort but would result almost inevitably in failure. The National Labor Relations Board would be given many new tasks, and hobbled at every turn in attempting to carry them out. Unique restrictions on the Board's procedures would so greatly increase the backlog of unsettled cases that the parties might be driven to turn in despair from peaceful procedures to economic force.

IV. The fourth basic test by which I have measured this bill is the test of fairness.

The bill prescribes unequal penalties for the same offense. It would require the National Labor Relations Board to give priority to charges against workers over related charges against employers. It would discriminate against workers by arbitrarily penalizing them for all critical strikes.

Much has been made of the claim that the bill is intended simply to equalize the positions of labor and management. Careful analysis shows that this claim is unfounded. Many of the provisions of the bill standing alone seem innocent but, considered in relation to each other, reveal a consistent pattern of inequality.

The failure of the bill to meet these fundamental tests is clearly demonstrated by a more detailed consideration of its defects.

#### *1. The bill would substantially increase strikes*

(1) It would discourage the growing willingness of unions to include "no strike" provisions in bargaining agreements, since any labor organization signing such an agreement would expose itself to suit for contract violation if any of its members engaged in an unauthorized "wildcat" strike.

(2) It would encourage strikes by imposing highly complex and burdensome reporting requirements on labor organizations which wish to avail themselves of their rights under the National Labor Relations Act. In connection

with these reporting requirements, the bill would penalize unions for any failure to comply, no matter how inconsequential, by denying them all rights under the act. These provisions, which are irrelevant to the major purpose of the bill, seem peculiarly designed to place obstacles in the way of labor organizations which wish to appeal to the National Labor Relations Board for relief, and thus to impel them to strike or take other direct action.

(3) It would bring on strikes by depriving significant groups of workers of the right they now enjoy to organize and to bargain under the protection of law. For example, broad groups of employees who for purposes of the act would be classed as supervisors would be removed from the protection of the act. Such groups would be prevented from using peaceful machinery and would be left no option but the use of economic force.

(4) The bill would force unions to strike or to boycott if they wish to have a jurisdictional dispute settled by the National Labor Relations Board. This peculiar situation results from the fact that the Board is given authority to determine jurisdictional disputes over assignment of work only after such disputes have been converted into strikes or boycotts.

In addition to these ways in which specific provisions of the bill would lead directly to strikes, the cumulative effect of many of its other provisions which disrupt established relationships would result in industrial strife and unrest.

*2. The bill arbitrarily decides, against the workers, certain issues which are normally the subject of collective bargaining, and thus restricts the area of voluntary agreement*

(1) The bill would limit the freedom of employers and labor organizations to agree on methods of developing responsibility on the part of unions by establishing union security. While seeming to preserve the right to agree to the union shop, it would place such a multitude of obstacles in the way of such agreement that union security and responsibility would be largely canceled.

In this respect, the bill disregards the voluntary developments in the field of industrial relations in the United States over the past 150 years. Today over 11,000,000 workers are employed under some type of union-security contract. The great majority of the plants which have such union-security provisions have had few strikes. Employers in such plants are generally strong supporters of some type of union security, since it gives them a greater measure of stability in production.

(2) The bill would limit the freedom of employers and employees to establish and maintain welfare funds. It would prescribe arbitrary methods of administering them and rigidly limit the purposes for which they may be used. This is an undesirable intrusion by the Government into an important matter which should be the subject of private agreement between employers and employees.

(3) The bill presents the danger that employers and employees might be prohibited from agreeing on safety provisions, rest-period rules, and many other legitimate practices, since such practices may fall under the language defining "featherbedding."

*3. The bill would expose employers to numerous hazards by which they could be annoyed and hampered*

(1) The bill would invite frequent disruption of continuous plant production by opening up immense possibilities for many more elections, and adding new types of elections. The bill would invite electioneering for changes in representatives and for union security. This would harass employers in their production efforts and would generate raiding and jurisdictional disputes. The National Labor Relations Board has been developing sound principles of stability on these matters. The bill would overturn these principles to the detriment of employers.

(2) The bill would complicate the collective bargaining process for employers by permitting—and in some cases requiring—the splitting up of stable patterns of representation. Employers would be harassed by having to deal with many small units. Labor organizations would be encouraged to engage in constant interunion warfare, which could result only in confusion.

(3) The bill would invite unions to sue employers in the courts regarding the thousands of minor grievances which arise every day over the interpretation of bargaining agreements. Employers are likely to be besieged by a multiplicity of minor suits, since management necessarily must take the initiative in applying the terms of agreements. In this respect, the bill ignores the fact that employers and unions are in wide agreement that the interpretation of the provisions of bargaining agreements should be submitted to the processes of negotiation ending in voluntary arbitration, under penalties prescribed in the agreement itself. This is one of the points on which the National Labor-Management Conference in November 1945 placed special emphasis. In introducing damage suits as a possible substitute for grievance machinery, the bill rejects entirely the informal wisdom of those experienced in labor relations.

(4) The bill would prevent an employer from freely granting a union-shop contract, even where he and virtually his entire working force were in agreement as to its desirability. He would be required to refrain from agreement until the National Labor Relations Board's work load permitted it to hold an election—in this case simply to ratify an unquestioned and legitimate agreement.

Employers, moreover, would suffer because the ability of unions to exercise responsibility under bargaining agreements would be diminished. Labor organizations whose disciplinary authority is weakened cannot carry their full share of maintaining stability of production.

*4. The bill would deprive workers of vital protection which they now have under the law*

(1) The bill would make it easier for an employer to get rid of employees whom he wanted to discharge because they exercised their right of self-organization guaranteed by the act. It would permit an employer to dismiss a man on the pretext of a slight infraction of shop rules, even though his real motive was to discriminate against this employee for union activity.

(2) The bill would also put a powerful new weapon in the hands of employers by permitting them to initiate elections at times strategically advantageous to them. It is significant that employees on economic strike who may have been replaced are denied a vote. An employer could easily thwart the will of his employees by raising a question of representation at a time when the union was striking over contract terms.

(3) It would give employers the means to engage in endless litigation, draining the energy and resources of unions in court actions, even though the particular charges were groundless.

(4) It would deprive workers of the power to meet the competition of goods produced under sweatshop conditions by permitting employers to halt every type of secondary boycott, not merely those for unjustifiable purposes.

(5) It would reduce the responsibility of employers for unfair labor practices committed in their behalf. The effect of the bill is to narrow unfairly employer liability for antiunion acts and statements made by persons who, in the eyes of the employees affected, act and speak for management, but who may not be "agents" in the strict legal sense of that term.

(6) At the same time it would expose unions to suits for acts of violence, wildcat strikes and other actions, none of which were authorized or ratified by them. By employing elaborate legal doctrine, the bill applies a superficially similar test of responsibility for employers and unions—each would be responsible for the acts of his "agents." But the power of an employer to control the acts of his subordinates is direct and final. This is radically different from the power of unions to control the acts of their members—who are, after all, members of a free association.

*5. The bill abounds in provisions which would be unduly burdensome or actually unworkable*

(1) The bill would erect an unworkable administrative structure for carrying out the National Labor Relations Act. The bill would establish, in effect, an independent General Counsel and an independent Board. But it would place with the Board full responsibility for investigating and determining election cases—over 70 percent of the present case load—and at the same time would remove from the Board the authority to direct and control the personnel engaged in carrying out this responsibility.

(2) It would invite conflict between the National Labor Relations Board

and its General Counsel, since the General Counsel would decide, without any right of appeal by employers and employees, whether charges were to be heard by the Board, and whether orders of the Board were to be referred to the court for enforcement. By virtue of this unlimited authority, a single administrative official might usurp the Board's responsibility for establishing policy under the act.

(3) It would strait-jacket the National Labor Relations Board's operations by a series of special restrictions unknown to any other quasi judicial agency. After many years of study, the Congress adopted the Administrative Procedures Act of 1946 to govern the operation of all quasi judicial agencies, including the National Labor Relations Board. This present bill disregards the Procedures Act and, in many respects, is directly contrary to the spirit and letter of that act. Simple and time-saving procedures, already established and accepted as desirable by employers and employees, would be summarily scrapped. The Board itself, denied the power of delegation, would be required to hear all jurisdictional disputes over work tasks. This single duty might require a major portion of the Board's time. The review function within the Board, largely of a nonjudicial character, would be split up and assigned to separate staffs attached to each Board member. This would lead to extensive and costly duplication of work and records.

(4) The bill would require or invite Government supervised elections in an endless variety of cases. Questions of the bargaining unit, of representatives, of union security, of bargaining offers, are subject to election after election, most of them completely unnecessary. The National Labor Relations Board has had difficulty conducting the number of elections required under present law. This bill would greatly multiply this load. It would in effect impose upon the Board a 5-year backlog of election cases, if it handled them at its present rate.

(5) The bill would introduce a unique handicap, unknown in ordinary law, upon the use of statements as evidence of unfair labor practices. An antiunion statement by an employer, for example, could not be considered as evidence of motive, unless it contained an explicit threat of reprisal or force or promise of benefit. The bill would make it an unfair labor practice to "induce or encourage" certain types of strikes and boycotts—and then would forbid the National Labor Relations Board to consider as evidence "views, argument, or opinion" by which such a charge could be proved.

(6) The bill would require the Board to "determine" jurisdictional disputes over work tasks, instead of using arbitration, the accepted and traditional method of settling such disputes. In order to get its case before the Board a union must indulge in a strike or a boycott and wait for some other party to allege that it had violated the law. If the Board's decision should favor the party thus forced to violate the law in order that its case might be heard, the Board would be without power over other parties to the dispute to whom the award might be unacceptable.

(7) The bill would require the Board to determine which employees on strike are "entitled to reinstatement" and hence would be eligible to vote in an election held during a strike. This would be an impossible task, since it would require the Board arbitrarily to decide which, if any, of the employees had been replaced and therefore should not be allowed to vote.

*6. The bill would establish an ineffective and discriminatory emergency procedure for dealing with major strikes affecting the public health or safety*

This procedure would be certain to do more harm than good, and to increase rather than diminish widespread industrial disturbances. I am convinced that the country would be in for a bitter disappointment if these provisions of the bill became law.

The procedure laid down by the bill is elaborate. Its essential features are a Presidential board of inquiry, a waiting period of approximately 80 days (enforced by injunction), and a secret ballot vote of the workers on the question of whether or not to accept their employer's last offer.

At the outset a board of inquiry would be required to investigate the situation thoroughly, but would be specifically forbidden to offer its informed judgment concerning a reasonable basis for settlement of the dispute. Such inquiry therefore would serve merely as a sounding board to dramatize the respective positions of the parties.

A strike or lock-out might occur before the board of inquiry could make its report, and perhaps even before the board could be appointed. The existence of such a strike or lock-out would hamper the board in pursuing its inquiry. Experience has shown that fact finding, if it is to be most effective as a device for settlement of labor disputes, should come before the men leave their work, not afterward. Furthermore an injunction issued after a strike has started would arouse bitter resentment which would not contribute to agreement.

If the dispute had not been settled after 60 days of the waiting period, the National Labor Relations Board would be required to hold a separate election for the employees of each employer to find out whether the workers wished to accept the employer's last offer, as stated by him. Our experience under the War Labor Disputes Act showed conclusively that such an election would almost inevitably result in a vote to reject the employer's offer, since such action amounts to a vote of confidence by the workers in their bargaining representatives. The union would then be reinforced by a dramatic demonstration, under Government auspices, of its strength for further negotiations.

After this elaborate procedure the injunction would then have to be dissolved, the parties would be free to fight out their dispute, and it would be mandatory for the President to transfer the whole problem to the Congress, even if it were not in session. Thus, major economic disputes between employers and their workers over contract terms might ultimately be thrown



into the political arena for disposition. One could scarcely devise a less effective method for discouraging critical strikes.

This entire procedure is based upon the same erroneous assumptions as those which underlay the strike-vote provision of the War Labor Disputes Act, namely, that strikes are called in haste as the result of inflamed passions, and that union leaders do not represent the wishes of the workers. We have learned by experience, however, that strikes in the basic industries are not called in haste, but only after long periods of negotiation and serious deliberation; and that in the secret-ballot election the workers almost always vote to support their leaders.

Furthermore, a fundamental inequity runs through these provisions. The bill provides for injunctions to prohibit workers from striking, even against terms dictated by employers after contracts have expired. There is no provision assuring the protection of the rights of the employees during the period they are deprived of the right to protect themselves by economic action.

In summary, I find that the so-called "emergency procedure" would be ineffective. It would provide for clumsy and cumbersome Government intervention; it would authorize inequitable injunctions; and it would probably culminate in a public confession of failure. I cannot conceive that this procedure would aid in the settlement of disputes.

#### *7. The bill would discriminate against employees*

(1) It would impose discriminatory penalties upon employers and employees for the same offense, that of violating the requirement that existing agreements be maintained for 60 days without strike or lock-out while a new agreement is being negotiated. Employers could only be required to restore the previous conditions of employment, but employees could be summarily dismissed by the employer.

(2) The bill would require the Board to seek a temporary restraining order when labor organizations had been charged with boycotts or certain kinds of jurisdictional strikes. It would invite employers to find any pretext for arguing that "an object" of the union's action was one of these practices, even though the primary object was fully legitimate. Moreover, since these cases would be taken directly into the courts, they necessarily would be settled by the judiciary before the National Labor Relations Board had a chance to decide the issue. This would thwart the entire purpose of the National Labor Relations Act in establishing the Board, which purpose was to confer on the Board, rather than the courts, the power to decide complex questions of fact in a special field requiring expert knowledge. This provision of the bill is clearly a backward step toward the old abuses of the labor injunction. No similar provision directed against employers can be found in the bill.

(3) The bill would also require the Board to give priority in investigating charges of certain kinds of unfair labor practices against unions, even though

such unfair labor practices might have been provoked by those of the employer. Thus the bill discriminates, in this regard, in the relief available to employers and unions.

(4) It would impose on labor organizations, but not on employers, burdensome reporting requirements which must be met before any rights would be available under the act.

(5) In weakening the protections afforded to the right to organize, contrary to the basic purpose of the National Labor Relations Act, the bill would injure smaller unions far more than larger ones. Those least able to protect themselves would be the principal victims of the bill.

*8. The bill would disregard in important respects the unanimous convictions of employer and labor representatives at the National Labor-Management Conference in November 1945*

(1) One of the strongest convictions expressed during the Conference was that the Government should withdraw from the collective-bargaining process, now that the war emergency is over, and leave the determination of working conditions to the free agreement of the parties. This bill proceeds in exactly the opposite direction. In numerous ways the bill would unnecessarily intrude the Government into the process of reaching free decisions through bargaining. This intrusion is precisely what the representatives of management and labor resented.

(2) A unanimous recommendation of the Conference was that the Conciliation Service should be strengthened within the Department of Labor. But this bill removes the Conciliation Service from the Department of Labor. The new name for the Service would carry with it no new dignity or new functions. The evidence does not support the theory that the conciliation function would be better exercised and protected by an independent agency outside the Department of Labor. Indeed, the Service would lose the important day-to-day support of factual research in industrial relations available from other units of the Department. Furthermore, the removal of the Conciliation Service from the Department of Labor would be contrary to the praiseworthy policy of the Congress to centralize related governmental units within the major Government departments.

*9. The bill raises serious issues of public policy which transcend labor-management difficulties*

(1) In undertaking to restrict political contributions and expenditures, the bill would prohibit many legitimate activities on the part of unions and corporations. This provision would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates or issues in national elections. I regard this as a dangerous intrusion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purposes of this bill.

Furthermore, this provision can be interpreted as going far beyond its apparent objectives, and as interfering with necessary business activities. It provides no exemption for corporations whose business is the publication of newspapers or the operation of radio stations. It makes no distinctions between expenditures made by such corporations for the purpose of influencing the results of an election, and other expenditures made by them in the normal course of their business "in connection with" an election. Thus it would raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations.

(2) In addition, in one important area the bill expressly abandons the principle of uniform application of national policy under Federal law. The bill's stated policy of preserving some degree of union security would be abdicated in all States where more restrictive policies exist. In other respects the bill makes clear that Federal policy would govern insofar as activities affecting commerce are concerned. This is not only an invitation to the States to distort national policy as they see fit, but is a complete forsaking of a long-standing constitutional principle.

(3) In regard to Communists in unions, I am convinced that the bill would have an effect exactly opposite to that intended by the Congress. Congress intended to assist labor organizations to rid themselves of Communist officers. With this objective I am in full accord. But the effect of this provision would be far different. The bill would deny the peaceful procedures of the National Labor Relations Act to a union unless all its officers declared under oath that they were not members of the Communist Party and that they did not favor the forceful or unconstitutional overthrow of the Government. The mere refusal by a single individual to sign the required affidavit would prevent an entire national labor union from being certified for purposes of collective bargaining. Such a union would have to win all its objectives by strike, rather than by orderly procedure under the law. The union and the affected industry would be disrupted for perhaps a long period of time while violent electioneering, charges and counter-charges split open the union ranks. The only result of this provision would be confusion and disorder, which is exactly the result the Communists desire.

This provision in the bill is an attempt to solve difficult problems of industrial democracy by recourse to oversimplified legal devices. I consider that this provision would increase, rather than decrease, disruptive effects of Communists in our labor movement.

\* \* \*

The most fundamental test which I have applied to this bill is whether it would strengthen or weaken American democracy in the present critical hour. This bill is perhaps the most serious economic and social legislation of the past decade. Its effects—for good or ill—would be felt for decades to come.

I have concluded that the bill is a clear threat to the successful working of our democratic society.

One of the major lessons of recent world history is that free and vital trade unions are a strong bulwark against the growth of totalitarian movements. We must, therefore, be everlastingly alert that in striking at union abuses we do not destroy the contribution which unions make to our democratic strength.

This bill would go far toward weakening our trade-union movement. And it would go far toward destroying our national unity. By raising barriers between labor and management and by injecting political considerations into normal economic decisions, it would invite them to gain their ends through direct political action. I think it would be exceedingly dangerous to our country to develop a class basis for political action.

I cannot emphasize too strongly the transcendent importance of the United States in the world today as a force for freedom and peace. We cannot be strong internationally if our national unity and our productive strength are hindered at home. Anything which weakens our economy or weakens the unity of our people—as I am thoroughly convinced this bill would do—I cannot approve.

In my message on the state of the Union, which I submitted to the Congress in January 1947, I recommended a step-by-step approach to the subject of labor legislation. I specifically indicated the problems which we should treat immediately. I recommended that, before going on to other problems, a careful, thorough and nonpartisan investigation should be made, covering the entire field of labor-management relations.

The bill now before me reverses this procedure. It would make drastic changes in our national labor policy first, and would provide for investigation afterward.

There is still a genuine opportunity for the enactment of appropriate labor legislation this session. I still feel that the recommendations which I expressed in the state of the Union message constitute an adequate basis for legislation which is moderate in spirit and which relates to known abuses.

For the compelling reasons I have set forth, I return H. R. 3020 without my approval.

HARRY S. TRUMAN

THE WHITE HOUSE, *June 20, 1947.*

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